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DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
JOSEPH A. HOLMES, DIRECTOR

UNITED STATES MINING STATUTES ANNOTATED

BY

J. W. THOMPSON

PART II.—MISCELLANEOUS MINING SUBJECTS

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NOTE.

This report consists of two parts:

PART I.

Preface; explanation of entire report; a complete table of contents, and sections of the Revised Statutes and Statutes at Large relating to metalliferous and coal mining, with annotations. Pp. 1–860.

PART II.

Table of contents of Part II; Statutes at Large and sections of Revised Statutes relating to miscellaneous mining subjects, with annotations; a list of abbreviations; a list of sections of Revised Statutes; a list of Statutes at Large; a list of the sections of Revised Statutes cited; a list of the Statutes at Large cited; a table of all cases cited, and a word index. Pp. 861–1772.

First edition. 1915.

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MISCELLANEOUS MINING SUBJECTS.

ALASKA COMPILED LAWS.

I. GENERAL MINING PROVISIONS.
II. MISCELLANEOUS MINING PROVISIONS, p. 898.

I. GENERAL MINING PROVISIONS.

SEC. 2594. That the Committee on Territories of the Senate and the Committee on Territories of the House of Representatives are hereby authorized, empowered, and directed to jointly codify, compile, publish, and annotate all the laws of the United States applicable to the Territory of Alaska, and said committees are jointly authorized to employ such assistance as may be necessary for that purpose; and the sum of $5,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to cover the expenses of said work, which shall be paid upon vouchers properly signed and approved by the chairmen of said committees. (Act of Aug. 24, 1912, 37 Stat. 512, sec. 19, p. 518.)

SEC. 29. There shall be a board of road commissioners in said District [Alaska] to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said District and to be designated by the Secretary of War. * * * The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said District to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgement such roads or trails are needed and will be of permanent value for the development of the District; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes. (Act of May 14, 1906, 34 Stat. 192.)

SEC. 40. The Secretary of the Interior is hereby authorized to issue a permit, by instrument in writing, in conformity with and subject to the restrictions herein contained, unto any responsible person, company, or corporation, for a right of way over the public domain in said District, not to exceed 100 feet in width, and ground for station and other necessary purposes, not to exceed 5 acres for each station for each 5 miles of road, to construct wagon roads and wire rope, aerial, or other tramways, and the privilege of taking all

necessary material from the public domain in said District for the construction of such wagon roads or tramways, together with the right, subject to supervision and at rates to be approved by said Secretary, to levy and collect toll or freight and passenger charges on passengers, animals, freight, or vehicles passing over the same for a period not exceeding 20 years; and said Secretary is also authorized to sell to the owner or owners of any such wagon road or tramway, upon the completion thereof, not to exceed 20 acres of public land at each terminus at $1.25 per acre, such lands when located at or near tidewater not to extend more than 40 rods in width along the shore line, and the title thereto to be upon such expressed conditions as in his judgment may be necessary to protect the public interest, and all minerals, including coal, in such right of way or station grounds shall be reserved to the United States: Provided, That such lands may be located concurrently with the line of such road or tramway, and the plat of preliminary survey and the map of definite location shall be filed as in the case of railroads and subject to the same conditions and limitations: Provided further, That such rights of way and privileges shall only be enjoyed by or granted to citizens of the United States or companies or corporations organized under the laws of a State or Territory; and such rights and privileges shall be held subject to the right of Congress to alter, amend, repeal, or grant equal rights to others on contiguous or parallel routes. And no right to construct a wagon road on which toll may be collected shall be granted unless it shall first be made to appear to the satisfaction of the Secretary of the Interior that the public convenience requires the construction of such proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. (Act of May 14, 1898, 30 Stat. 411.)

SEC. 42. That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by act of Congress. (Act of May 14, 1898, 30 Stat. 409, p. 412.)

Charlton Code, p. 58, sec. 7.

SEC. 46. That the Union Pioneer Mining & Trading Co., a corporation created and existing under and by virtue of the laws of the State of California, be, and it is hereby, authorized to construct and maintain a bridge across the Catalla Creek, in the District of Alaska, to be located at such point as shall be approved by the Secretary of War. Said bridge may be used for the passage of wagons and vehicles of all kinds, and for the transit of animals, and for foot passengers, for such reasonable rates of toll as may be fixed by said company and approved by the Secretary of War. (Act of Apr. 28, 1904, 33 Stat. 560.)

SEC. 47. That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, duly organized under the laws of any State or Territory, or by the Congress of the United States, which may hereafter file for record with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of 100 feet on each side of the center line of said road;

also the right to take from the lands of the United States adjacent to the line of said road material, earth, stone, and timber necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turnouts, water stations, and terminals, and other legitimate railroad purposes, not to exceed in amount 20 acres for each station, to the extent of one station for each 10 miles of its road, excepting at terminals and junction points, which may include additional 40 acres, to be limited on navigable waters to 80 rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary of the Interior be necessary where there are heavy cuts or fills: Provided, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns, the ownership or use of minerals, including coal, within the limits of its right of way, or of the lands hereby granted: Provided further, That all mining operations prosecuted or undertaken within the limits of such right of way, or of the lands hereby granted, shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. (Act of May 14, 1898, 30 Stat. 409.)

A. ALASKA RIGHT-OF-WAY ACT.
B. ACTIONS TO QUIET TITLE—HOMESTEAD AND MINERAL CLAIMANTS, p. 864.

A. ALASKA RIGHT-OF-WAY ACT.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.
2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.
3. ADVERSE CLAIMS.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.

Congress has not by this or any other Alaska act divested the Land Department of its general and exclusive authority to investigate and determine the mineral or nonmineral character of lands in that District, and the department is not bound by the decision of any court or other tribunal as to these questions.

Low v. Katalla Co., 40 L. D. 534, p. 540.
See Snyder v. Waller, 25 L. D. 7, p. 8.
Ryan v. Granite Hill Co., 29 L. D. 522, p. 524.

This act does no change the rule as to the jurisdiction of the Land Office to determine the question of the mineral or nonmineral character of the land in a contest between a mineral claimant and a homestead settler.

Nelson v. Brownell, 193 Fed. 641, p. 642.
See Lasley v. Brownell, 199 Fed. 772.

2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.

The 60-foot reservation provided for in this act does not, under section 26 of the act of June 6, 1900 (31 Stat. 321, p. 330), apply to mineral land.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.

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...STAT. L., MARCH 3, 1915 (PUBLIC, NO. 46, 63D CONGRESS).

...RAILROAD ACT.

...the President of the United States to locate, construct, and
...several railroads in the Territory of Alaska and for other purposes.

...That the President of the United States is
...directed to adopt and use a
...railroad or railroads and properties
...operated under the authority of
...agents, or agencies, in his discretion,
...carry out the purposes of this
...agents, or agencies to per-
...him by the terms of this
...officers in the Engineer Corps

in the Army or Navy to perform service under this act; to fix the compensation of all officers, agents, or employees appointed or designated by him; to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate 1,000 miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this act; to exercise the power of eminent domain in acquiring property for such use, which use is hereby declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this act; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease shall be for a longer period than twenty years, or in the event of failure to lease, to operate the same until the further action of Congress: Provided, That if said railroad or railroads, including telegraph and telephone lines, are leased under the authority herein given, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him: Provided, That the price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this act; to utilize in carrying on the work herein provided

This act only contemplates the reservation along the shore of an easement for highway purposes, and does not prohibit the location of a mining claim extending to the water's edge, but subject to the roadway easement.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.
Modifying Alaska Copper Co., In re, 32 L. D. 128, p. 131.

Notwithstanding the reservation of 60-foot roadways along the shore and navigable streams, a mining claim may be located to the water's edge.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.
Modifying Alaska Copper Co., In re, 32 L. D. 128.

Under the provision that a roadway 60 feet in width shall be reserved for public use along navigable streams and the seashore in Alaska, it follows that mill sites being nonmineral land do not fall within the exception of mineral land from such reservation provided by section 26, of the act of June 6, 1900 (31 Stat. 321, p. 330), and therefore their shoreward boundaries can not lawfully be laid within 60 feet of the water's edge.

Alaska Copper Co., In re, 32 L. D. 128, p. 131.

3. ADVERSE CLAIMS.

As adverse proceedings under the mining laws are confined to conflicting mining claims, so the adverse nature of this act should for like reasons be limited to cases of conflicts arising between nonmineral claimants only and should not be invoked or applied to cases of conflict arising between mining locators, on the one hand, and agricultural or nonmineral claimants, on the other.

Squires, In re, 40 L. D. 542, p. 544.

A court has jurisdiction to determine the superior right to the possession of land under this act as between the adverse claimants and by its decree to protect the one held to be entitled thereto and where a decree goes no further it is binding upon the department.

Crary v. Gavigan, 36 L. D. 225, p. 226.

B. ACTIONS TO QUIET TITLE—HOMESTEAD AND MINERAL CLAIMANTS.

The requirement of this section as to actions to quiet title does not apply to contests arising between homestead settlers and the locators of mineral claims concerning the mineral or nonmineral character of the land in controversy.

Nelson v. Brownell, 193 Fed. 641, p. 642.
See Lasley v. Brownell, 199 Fed. 772.

38 STAT. 305, MARCH 12, 1914 (PUBLIC, NO. 60, 63D CONGRESS).

ALASKA RAILROAD ACT.

AN ACT To authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes.

Be it enacted, etc., That the President of the United States is hereby empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of this act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this act; to detail and require any officer or officers in the Engineer Corps

in the Army or Navy to perform service under this act; to fix the compensation of all officers, agents, or employees appointed or designated by him; to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate 1,000 miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this act; to exercise the power of eminent domain in acquiring property for such use, which use is hereby declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this act; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease shall be for a longer period than twenty years, or in the event of failure to lease, to operate the same until the further action of Congress: Provided, That if said railroad or railroads, including telegraph and telephone lines, are leased under the authority herein given, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him: Provided, That the price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this act; to utilize in carrying on the work herein provided

for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this act.

The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone lines for hire.

That it is the intent and purpose of Congress through this act to authorize and empower the President of the United States, and he is hereby fully authorized and empowered, through such officers, agents, or agencies as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this act to enable him to accomplish the purposes and objects of this act.

The President is hereby authorized to withdraw, locate, and dispose of, under such rules and regulations as he may prescribe, such area or areas of the public domain along the line or lines of such proposed railroad or railroads for town-site purposes as he may from time to time designate.

Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this act, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of 100 feet on either side of the center line of any such road and 25 feet on either side of the center line of any such telegraph or telephone lines, and the President may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

SEC. 2. That the cost of the work authorized by this act shall not exceed $35,000,000, and in executing the authority granted by this act the President shall not expend nor obligate the United States to expend more than the said sum; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $1,000,000 to be used for carrying out the provisions of this act, to continue available until expended.

SEC. 3. That all moneys derived from the lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under this act, above maintenance charges and operating expenses, shall be paid into the Treas-

ury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

SEC. 4. That the officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided for shall be by the President transmitted to Congress.

SEC. 85. That until otherwise ordered by Congress, lands in Alaska may be entered for town-site purposes, for the several use and benefit of the occupants of such town sites, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, such entries to be made under the provisions of section 2387 of the Revised Statutes as near as may be; and when such entries shall have been made, the Secretary of the Interior shall provide by regulation for the proper execution of the trust in favor of the inhabitants of the town site, including the survey of the land into lots, according to the spirit and intent of said section 2387 of the Revised Statutes, whereby the same results would be reached as though the entry had been made by a county judge and the disposal of the lots in such town site and the proceeds of the sale thereof had been prescribed by the legislative authority of a State or Territory: Provided, That no more than 640 acres shall be embraced in one town-site entry. (Act of Mar. 3, 1891, 26 Stat. 1095, p. 1099.)

See townsite, pp. 1354–1382.

Section 86 is the same as section 2387 R. S., townsite laws, p. 1354.

Section 88 is the same as section 2392, R. S., townsite laws, p. 1367.

Section 90 is the same as section 16, 26 Stat. 1095, p. 1378.

SEC. 92. Any citizen of the United States 21 years of age, or any association of such citizens, or any corporation incorporated under the laws of the United States or of any State or Territory now authorized by law to hold lands in the Territories, hereafter in the possession of and occupying public lands in the District of Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding 80 acres of such land for any one person, association, or corporation, at $2.50 per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry, such tract of land not to include mineral or coal lands, and ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: Provided, That no entry shall be allowed under this act on lands abutting on navigable water of more than 80 rods: Provided further, That there shall be reserved by the United States a space of 80 rods in width between tracts sold or entered under the provisions of this act on lands abutting on any navigable stream, inlet, gulf, bay, or seashore, and that the Secretary of the Interior may grant the use of such reserved lands abutting on the water front to any citizen or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for land-

ings and wharves, with the provision that the public shall have access to and proper use of such wharves and landings, at reasonable rates of toll to be prescribed by said Secretary, and a roadway 60 feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway: * * * (Act of May 14, 1898, 30 Stat. 409.)

SEC. 92¼. Any citizen of the United States 21 years of age, and any association of such citizens, and any corporation incorporated under the laws of the United States, or of any State or Territory of the United States now authorized by law to hold lands in the Territories now or hereafter in possession of and occupying public lands in Alaska for the purpose of trade or manufactures, may purchase not exceeding 160 acres, to be taken as near as practicable in a square form, of such land at $2.50 per acre: Provided, That in case more than one person, association, or corporation shall claim the same tract of land the person, association, or corporation having the prior claim by reason of possession and continued occupation shall be entitled to purchase the same; but the entry of no person, association, or corporation shall include improvements made by or in possession of another prior to the passage of this act. (Act of Mar. 3, 1891, 26 Stat. 1100.)

Charlton Code, page 36, section 12.

SEC. 92½. It shall be the duty of any person, association, or corporation entitled to purchase land under this act to make an application to the United States marshal, ex officio surveyor general of Alaska, for an estimate of the cost of making a survey of the lands occupied by such person, association, or corporation, and the cost of the clerical work necessary to be done in the office of the said United States marshal, ex officio surveyor general; and on the receipt of such estimate from the United States marshal, ex officio surveyor general, the said person, association, or corporation shall deposit the amount in a United States depository, as is required by section 2401, Revised Statutes, relating to deposits for surveys.

That on the receipt by the United States marshal, ex officio surveyor general, of the said certificates of deposit he shall employ a competent person to make such survey, under such rules and regulations as may be adopted by the Secretary of the Interior, who shall make his return of his field notes and maps to the office of the said United States marshal, ex officio surveyor general; and the said United States marshal, ex officio surveyor general, shall cause the said field notes and plats of such survey to be examined, and, if correct, approve the same, and shall transmit certified copies of such maps and plats to the office of the Commissioner of the General Land Office.

That when the said field notes and plats of said survey shall have been approved by the said Commissioner of the General Land Office, he shall notify such person, association, or corporation, who shall then, within six months after such notice, pay to the said United States marshal, ex officio surveyor general, for such land, and patent shall issue for the same. (Act of Mar. 3, 1891, 26 Stat. 1095, p. 1100.)

SEC. 92¾. None of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the

United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the islands of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding 640 acres in any one tract now occupied as missionary stations in said District of Alaska are hereby excepted from the operation of the last three preceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections, the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon. (Act of Mar. 3, 1891, 26 Stat. 1100.)

SEC. 98. Incorporated cities and towns shall have the right, under rules and regulations prescribed by the Secretary of the Interior, to purchase for cemetery and park purposes not exceeding one-quarter section of public lands not reserved for public use, such lands to be within 3 miles of such cities or towns: Provided, That when such city or town is situated within a mining district, the land proposed to be taken under this act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered in such patent. (Act of Sept. 30, 1890, 26 Stat. 502.)

SEC. 100. That the Secretary of the Interior, under such rules and regulations as he may prescribe, may cause to be appraised the timber or any part thereof upon public lands in the District of Alaska, and may from time to time sell so much thereof as he may deem proper for not less than the appraised value thereof, in such quantities to each purchaser as he shall prescribe, to be used in the District of Alaska, but not for export therefrom. And such sales shall at all times be limited to actual necessities for consumption in the District from year to year, and payments for such timber shall be made to the receiver of public moneys of the local land office of the land district in which said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe, and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office in a separate account, and shall be covered into the Treasury. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber found upon the public lands in said District of Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes, as may actually be needed by such persons for such purposes. (Act of May 14, 1898, 30 Stat. 414.)

SEC. 101. That all the provisions of the homestead laws of the United States not in conflict with the provisions of this act, and all rights incident thereto, are hereby extended to the District of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency, or lieu land selections pertaining to any land grant outside of the District of Alaska shall be made,

MISCELLANEOUS MINING SUBJECTS.

ALASKA COMPILED LAWS.

I. GENERAL MINING PROVISIONS.
II. MISCELLANEOUS MINING PROVISIONS, p. 898.

I. GENERAL MINING PROVISIONS.

SEC. 2594. That the Committee on Territories of the Senate and the Committee on Territories of the House of Representatives are hereby authorized, empowered, and directed to jointly codify, compile, publish, and annotate all the laws of the United States applicable to the Territory of Alaska, and said committees are jointly authorized to employ such assistance as may be necessary for that purpose; and the sum of $5,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to cover the expenses of said work, which shall be paid upon vouchers properly signed and approved by the chairmen of said committees. (Act of Aug. 24, 1912, 37 Stat. 512, sec. 19, p. 518.)

SEC. 29. There shall be a board of road commissioners in said District [Alaska] to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said District and to be designated by the Secretary of War. * * * The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said District to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgement such roads or trails are needed and will be of permanent value for the development of the District; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes. (Act of May 14, 1906, 34 Stat. 192.)

SEC. 40. The Secretary of the Interior is hereby authorized to issue a permit, by instrument in writing, in conformity with and subject to the restrictions herein contained, unto any responsible person, company, or corporation, for a right of way over the public domain in said District, not to exceed 100 feet in width, and ground for station and other necessary purposes, not to exceed 5 acres for each station for each 5 miles of road, to construct wagon roads and wire rope, aerial, or other tramways, and the privilege of taking all

necessary material from the public domain in said District for the construction of such wagon roads or tramways, together with the right, subject to supervision and at rates to be approved by said Secretary, to levy and collect toll or freight and passenger charges on passengers, animals, freight, or vehicles passing over the same for a period not exceeding 20 years; and said Secretary is also authorized to sell to the owner or owners of any such wagon road or tramway, upon the completion thereof, not to exceed 20 acres of public land at each terminus at $1.25 per acre, such lands when located at or near tidewater not to extend more than 40 rods in width along the shore line, and the title thereto to be upon such expressed conditions as in his judgment may be necessary to protect the public interest, and all minerals, including coal, in such right of way or station grounds shall be reserved to the United States: Provided, That such lands may be located concurrently with the line of such road or tramway, and the plat of preliminary survey and the map of definite location shall be filed as in the case of railroads and subject to the same conditions and limitations: Provided further, That such rights of way and privileges shall only be enjoyed by or granted to citizens of the United States or companies or corporations organized under the laws of a State or Territory; and such rights and privileges shall be held subject to the right of Congress to alter, amend, repeal, or grant equal rights to others on contiguous or parallel routes. And no right to construct a wagon road on which toll may be collected shall be granted unless it shall first be made to appear to the satisfaction of the Secretary of the Interior that the public convenience requires the construction of such proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. (Act of May 14, 1898, 30 Stat. 411.)

SEC. 42. That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by act of Congress. (Act of May 14, 1898, 30 Stat. 409, p. 412.)

Charlton Code, p. 58, sec. 7.

SEC. 46. That the Union Pioneer Mining & Trading Co., a corporation created and existing under and by virtue of the laws of the State of California, be, and it is hereby, authorized to construct and maintain a bridge across the Catalla Creek, in the District of Alaska, to be located at such point as shall be approved by the Secretary of War. Said bridge may be used for the passage of wagons and vehicles of all kinds, and for the transit of animals, and for foot passengers, for such reasonable rates of toll as may be fixed by said company and approved by the Secretary of War. (Act of Apr. 28, 1904, 33 Stat. 560.)

SEC. 47. That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, duly organized under the laws of any State or Territory, or by the Congress of the United States, which may hereafter file for record with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of 100 feet on each side of the center line of said road;

also the right to take from the lands of the United States adjacent to the line of said road material, earth, stone, and timber necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turnouts, water stations, and terminals, and other legitimate railroad purposes, not to exceed in amount 20 acres for each station, to the extent of one station for each 10 miles of its road, excepting at terminals and junction points, which may include additional 40 acres, to be limited on navigable waters to 80 rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary of the Interior be necessary where there are heavy cuts or fills: Provided, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns, the ownership or use of minerals, including coal, within the limits of its right of way, or of the lands hereby granted: Provided further, That all mining operations prosecuted or undertaken within the limits of such right of way, or of the lands hereby granted, shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. (Act of May 14, 1898, 30 Stat. 409.)

A. ALASKA RIGHT-OF-WAY ACT.
B. ACTIONS TO QUIET TITLE—HOMESTEAD AND MINERAL CLAIMANTS, p. 864.

A. ALASKA RIGHT-OF-WAY ACT.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.
2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.
3. ADVERSE CLAIMS.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.

Congress has not by this or any other Alaska act divested the Land Department of its general and exclusive authority to investigate and determine the mineral or nonmineral character of lands in that District, and the department is not bound by the decision of any court or other tribunal as to these questions.

Low v. Katalla Co., 40 L. D. 534, p. 540.
See Snyder v. Waller, 25 L. D. 7, p. 8.
Ryan v. Granite Hill Co., 29 L. D. 522, p. 524.

This act does no change the rule as to the jurisdiction of the Land Office to determine the question of the mineral or nonmineral character of the land in a contest between a mineral claimant and a homestead settler.

Nelson v. Brownell, 193 Fed. 641, p. 642.
See Lasley v. Brownell, 199 Fed. 772.

2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.

The 60-foot reservation provided for in this act does not, under section 26 of the act of June 6, 1900 (31 Stat. 321, p. 330), apply to mineral land.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.

necessary material from the public domain in said District for the construction of such wagon roads or tramways, together with the right, subject to supervision and at rates to be approved by said Secretary, to levy and collect toll or freight and passenger charges on passengers, animals, freight, or vehicles passing over the same for a period not exceeding 20 years; and said Secretary is also authorized to sell to the owner or owners of any such wagon road or tramway, upon the completion thereof, not to exceed 20 acres of public land at each terminus at $1.25 per acre, such lands when located at or near tidewater not to extend more than 40 rods in width along the shore line, and the title thereto to be upon such expressed conditions as in his judgment may be necessary to protect the public interest, and all minerals, including coal, in such right of way or station grounds shall be reserved to the United States: Provided, That such lands may be located concurrently with the line of such road or tramway, and the plat of preliminary survey and the map of definite location shall be filed as in the case of railroads and subject to the same conditions and limitations: Provided further, That such rights of way and privileges shall only be enjoyed by or granted to citizens of the United States or companies or corporations organized under the laws of a State or Territory; and such rights and privileges shall be held subject to the right of Congress to alter, amend, repeal, or grant equal rights to others on contiguous or parallel routes. And no right to construct a wagon road on which toll may be collected shall be granted unless it shall first be made to appear to the satisfaction of the Secretary of the Interior that the public convenience requires the construction of such proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. (Act of May 14, 1898, 30 Stat. 411.)

SEC. 42. That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by act of Congress. (Act of May 14, 1898, 30 Stat. 409, p. 412.)

Charlton Code, p. 58, sec. 7.

SEC. 46. That the Union Pioneer Mining & Trading Co., a corporation created and existing under and by virtue of the laws of the State of California, be, and it is hereby, authorized to construct and maintain a bridge across the Catalla Creek, in the District of Alaska, to be located at such point as shall be approved by the Secretary of War. Said bridge may be used for the passage of wagons and vehicles of all kinds, and for the transit of animals, and for foot passengers, for such reasonable rates of toll as may be fixed by said company and approved by the Secretary of War. (Act of Apr. 28, 1904, 33 Stat. 560.)

SEC. 47. That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, duly organized under the laws of any State or Territory, or by the Congress of the United States, which may hereafter file for record with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of 100 feet on each side of the center line of said road;

also the right to take from the lands of the United States adjacent to the line of said road material, earth, stone, and timber necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turnouts, water stations, and terminals, and other legitimate railroad purposes, not to exceed in amount 20 acres for each station, to the extent of one station for each 10 miles of its road, excepting at terminals and junction points, which may include additional 40 acres, to be limited on navigable waters to 80 rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary of the Interior be necessary where there are heavy cuts or fills: Provided, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns, the ownership or use of minerals, including coal, within the limits of its right of way, or of the lands hereby granted: Provided further, That all mining operations prosecuted or undertaken within the limits of such right of way, or of the lands hereby granted, shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. (Act of May 14, 1898, 30 Stat. 409.)

A. ALASKA RIGHT-OF-WAY ACT.
B. ACTIONS TO QUIET TITLE—HOMESTEAD AND MINERAL CLAIMANTS, p. 864.

A. ALASKA RIGHT-OF-WAY ACT.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.
2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.
3. ADVERSE CLAIMS.

1. EFFECT ON AUTHORITY OF LAND DEPARTMENT.

Congress has not by this or any other Alaska act divested the Land Department of its general and exclusive authority to investigate and determine the mineral or nonmineral character of lands in that District, and the department is not bound by the decision of any court or other tribunal as to these questions.

Low v. Katalla Co., 40 L. D. 534, p. 540.
See Snyder v. Waller, 25 L. D. 7, p. 8.
Ryan v. Granite Hill Co., 29 L. D. 522, p. 524.

This act does no change the rule as to the jurisdiction of the Land Office to determine the question of the mineral or nonmineral character of the land in a contest between a mineral claimant and a homestead settler.

Nelson v. Brownell, 193 Fed. 641, p. 642.
See Lasley v. Brownell, 199 Fed. 772.

2. RESERVATIONS ALONG SHORE FOR HIGHWAYS.

The 60-foot reservation provided for in this act does not, under section 26 of the act of June 6, 1900 (31 Stat. 321, p. 330), apply to mineral land.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.

6. EFFECT ON TITLE AND POSSESSION OF MINING CLAIMS.

The title to all lands in Alaska, mineral and nonmineral, was in the Federal Government prior to May 17, 1884, and persons making improvements on any such lands had a possessory title only to the premises occupied and improved, and mineral claimants had no different right or title than that of nonmineral claimants.

Young v. Goldsteen, 97 Fed. 303, p. 307.

7. LOCATION CERTIFICATE ADMISSIBLE IN EVIDENCE.

Under the statute as applied to the Territory of Alaska a location certificate is admissible in evidence in a controversy over a mining claim for the purpose of showing the time when possession was taken, and as tending to show the property described, and the property of which possession was taken, and especially where the complaint contains an accurate description of the property.

Bennett v. Harkrader, 158 U. S. 441, pp. 443, 445.

8. LANDS ABOVE HIGH TIDE OPEN TO LOCATION.

Lands lying on a beach above the line of ordinary high tide are public lands of the United States, and, if mineral in character, can be located, occupied, and held under the mining laws as extended to Alaska, except where a roadway is located parallel to the shore line and reserved for the use of the public, under the act of May 14, 1898 (30 Stat. 409, p. 413).

Logan, In re, 29 L. D. 395.

9. TIDE LANDS NOT OPEN TO LOCATION.

Mineral lands lying below the line of ordinary high tide in Alaska are not open to location and occupation under the mining laws, and the Land Department is without authority to grant any concessions whatever as to working of such tidelands for mining purposes.

Logan, In re, 29 L. D. 395, p. 397.

Congress, by this specific enactment (Sec. 26, 31 Stat. 321, p. 329), made the land between low and mean high tide on the shores, bays, and inlets of Bering Sea subject to exploration and mining for gold and other precious metals, but did not extend this provision to other shore lands in Alaska, nor to the banks of navigable rivers.

Heine v. Roth, 2 Alaska 416, p. 425.

10. ROADWAYS ON WATER FRONTS—APPLICATION TO MINERAL LANDS AND MILL SITES.

The 60-foot roadway reserved by section 10 of the act of May 14, 1898 (30 Stat. 409, p. 413), does not apply to mineral lands.

Alaska Mildred Gold Min. Co., In re, 42 L. D. 255, p. 258.

A mill-site claim being nonmineral land does not come within the reservation of section 26, 31 Stat. 321, p. 330, and under the tenth section of the act of May 14, 1898 (30 Stat. 409, p. 413), reserving a 60-foot roadway along a navigable water front, the shore-ward boundaries of a mill site can not lawfully be laid within 60 feet of the water's edge.

Alaska Copper Co., In re, 32 L. D. 128, p. 131.

SEC. 129a. That no association placer-mining claim shall hereafter be located in Alaska in excess of 40 acres, and on every placer-mining claim hereafter located in Alaska, and until a patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, including the year of location, for each and every 20 acres or excess fraction thereof. (Act of Aug. 1, 1912, 37 Stat. 242.)

SEC. 129b. That no person shall hereafter locate any placer-mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made. Any person so authorized may locate placer-mining claims for not more than two individuals or one association under such power of attorney, but no such agent or attorney shall be authorized or permitted to locate more than two placer-mining claims for any one principal or association during any calendar month, and no placer-mining claim shall hereafter be located in Alaska except under the limitations of this act. (Act of Aug. 1, 1912, 37 Stat. 242.)

SEC. 129c. That no person shall hereafter locate, cause or procure to be located, for himself more than two placer-mining claims in any calendar month: Provided, That one or both of such locations may be included in an association claim. (Act of Aug. 1, 1912, 37 Stat. 242.)

SEC. 129d. That no placer-mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width. (Act of Aug. 1, 1912, 37 Stat. 242.)

SEC. 129e. That any placer-mining claim attempted to be located in violation of this act shall be null and void, and the whole area thereof may be located by any qualified locator as if no such prior attempt had been made. (Act of Aug. 1, 1912, 37 Stat. 242.)

A. PLACER CLAIMS—ALASKA.

1. LOCATIONS MUST COMPLY WITH THIS ACT.
2. EXCESSIVE AREA—INVALIDITY.
3. NUMBER LOCATED EACH MONTH.
4. LOCATIONS BY AGENTS—AUTHORITY AND POWER.
5. APPLICATION FOR PATENT—FORM AND SUFFICIENCY.
6. NUMBER OF CLAIMS INCLUDED IN APPLICATION.
7. SURVEYOR GENERAL—DUTIES TO SURVEY.
8. AMOUNT OF ANNUAL EXPENDITURES—TIME OF PERFORMANCE.

1. LOCATIONS MUST COMPLY WITH THIS ACT.

Any attempted placer location not made in conformity with this statute is a nullity, and the land covered thereby is subject to proper location at any time.

Placer Min. Claims in Alaska, In re, 41 L. D. 337, p. 349.

A placer-mining claim can not lawfully be located except in compliance with and under the limitations of this act.

Placer Min. Claims in Alaska, In re, 41 L. D. 337, p. 348.

2. EXCESSIVE AREA—INVALIDITY.

Section 129d prohibits the patenting of any placer-mining claims located in Alaska which contains a greater area than that fixed by law or which is longer than three times its greatest width.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 349.

3. NUMBER LOCATED EACH MONTH.

Whenever a person or association has participated in the location of two placer-mining claims in Alaska in any calendar month, the right of such person or association is thereby exhausted for the particular month.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 349.

One of the purposes of this act is to limit the number of placer-mining locations that can be made in Alaska through agents or attorneys and the number of locations can not exceed the limitations expressed in the act.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

4. LOCATIONS BY AGENTS—AUTHORITY AND POWER.

If a location is made by an agent or attorney the power of attorney must be in writing and must be executed and acknowledged in accordance with the laws of Alaska, or of the State, Territory, or District in which it shall be executed, and such power must be recorded in the proper recorder's office and a certified copy must accompany the application for patent and may be attached to and made a part of the abstract of title.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

An authorized agent or attorney can act in making locations of placer-mining claims for two individual principals or one association principal only during any calendar month, and during such period may not lawfully locate more than two claims for any one principal, either individual or association.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

5. APPLICATION FOR PATENT—FORM AND SUFFICIENCY.

Application for patent under this act should be accompanied by the sworn statement of the agent or attorney setting forth specifically the names of all placer-mining claims located or attempted to be located by him under powers of attorney during the calendar month in which any such claim was located, and should state the date of location and the names of the locators.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

6. NUMBER OF CLAIMS INCLUDED IN APPLICATION.

This act does not affect the number of claims, either lode or placer, and if placer, whether located before or after the passage of the act, that may be included in a single application for patent.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 349.

7. SURVEYOR GENERAL—DUTIES TO SURVEY.

The surveyor general must observe the requirements as to the dimensions of a placer claim in Alaska and must not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 349.

8. AMOUNT OF ANNUAL EXPENDITURES—TIME OF PERFORMANCE.

The amount of annual expenditure on a placer claim is dependent upon the size of the claim, but at least $100 must be expended for each 20 acres, or excess fraction thereof, embraced in the location.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

The first annual expenditure on a placer mining location must be accomplished for and during the calendar year during which the claim was located instead of the calendar year succeeding that in which the location was made.

Placer Min. Claims in Alaska, In re, 41 L. D. 347, p. 348.

Sections 130 to 138, inclusive, are the same as sections 2318 to 2326 R. S., inclusive, pp. 1–503.

SEC. 139. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyor general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto. (Act of Apr. 28, 1904, 33 Stat. 545.)

See sec. 2327 R. S.
Sections 140 to 148, inclusive, are the same as sections 2328 to 2336 R. S., inclusive, pp. 506–592.
Section 152 is the same as section 2340 R. S., p. 622.
Section 153 is the same as amendment 2 of section 2324 R. S., p. 282.
Section 154 is the same as amendment 3 of section 2324 R. S., p. 282.
Section 155 is the same as amendment 4 of section 2324 R. S., p. 283.
Section 156 is the same as amendment 1 of section 2325 R. S., p. 426.
Section 157 is the same as amendment 1 of section 2326 R. S., p. 496.
Sections 158 and 159 are the same as amendment 2 of section 2326 R. S., p. 502.
Section 160 is the same as 35 Stat. 645, chap. 180, Settlers' relief, p. 1234.

SEC. 161. The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress.

That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter

made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: Provided further, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June 25, 1910: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals. (Act of June 25, 1910, 36 Stat. 847.)

See 34 Stat. 1271; 37 Stat. 497; and Withdrawals, p. 1388.

A. WITHDRAWAL OF COAL LANDS IN ALASKA.

On November 12, 1906, an order was made withdrawing all lands in Alaska from entry, location, or filing under the coal-land laws.

Alaskan Coal Lands, In re, 27 Op. Atty. Genl. 412, p. 414.
Coal Lands in Alaska, In re, 35 L. D. 572.

SEC. 162. During each year and until patent has been issued therefor, at least $100 worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the District of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of $100 as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number, of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this act the burden of proof shall be upon the claimant to establish the perform-

ance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections 5392 and 5393 of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than 90 days after the close of the year in which such work is performed.

The recorders for the several divisions or districts of Alaska shall collect the sum of $1.50 as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded. (Act of Mar. 2, 1907, 34 Stat. 1243.)

A. ALASKA MINING CLAIMS.

1. ANNUAL ASSESSMENT WORK.
2. AFFIDAVIT AS TO ASSESSMENT WORK.

1. ANNUAL ASSESSMENT WORK.

The consequences of a failure to complete the annual assessment or improvement work within the year under this act is not only different but is irreconcilable with the prior mining statutes, and to that extent, so far as it affects mining claims in Alaska, it necessarily repeals the prior law.

Thatcher v. Brown, 190 Fed. 708, p. 711.

2. AFFIDAVIT AS TO ASSESSMENT WORK.

By the act of March 2, 1907 (34 Stat. 1243), Congress conferred upon the locators of mining claims in Alaska a privilege not previously given by the mining statutes, which permitted Alaskan locators to file for record an affidavit showing the performance of the required annual assessment work and providing that such affidavit should be prima facie evidence of such performance, and the act expressly declares that on failure of the locator to comply with the provisions of the act as to performance of the assessment work the claim shall become forfeited and open to location by others as if no location of the same had ever been made.

Thatcher v. Brown, 190 Fed. 708, p. 710.

SEC. 163. In the District of Alaska adverse claims authorized and provided for in sections 2325 and 2326, United States Revised Statutes, may be filed at any time during the 60 days' period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section 2326, United States Revised Statutes, may be instituted at any time within 60 days after the filing of said claims in the local land office. (Act of June 7, 1910, 36 Stat. 459.)

SEC. 164. Every miner or other laborer who shall labor in or upon any mine or mining ground for another in the Territory of Alaska in digging, thawing, conveying, hoisting, piling, cleaning up, or any other kind of work in producing any mineral-bearing sands, gravels, earth, or rock, gold or gold dust, or other minerals, or shall aid or

assist therein by his labor as cook, engineer, fireman, or in cutting and delivering wood used in said work, or in work in any like capacity in producing the dump, shall, where his labor directly aided in such production, have a lien upon the dump or mass of mineral-bearing sands, gravels, earth, or rock, and all gold and gold dust, or other minerals therein, and all gold and gold dust extracted therefrom, for the full amount of wages for all the time which he was so employed as such laborer in producing the said dump, within one year next preceding his ceasing to labor thereon; and to the extent of the labor of the said miner or other laborer actually employed or expended thereon, within one year next prior to ceasing to labor thereon, the said lien shall be prior to and preferred over any deed, mortgage, bill of sale, attachment, conveyance, or other claim, whether the same was made or given prior to such labor or not: Provided, That this preference shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this act.

SEC. 165. Every laborer, within 90 days after the completion of the performance of the work or labor mentioned in the foregoing section who shall claim the benefit thereof, must, personally or by some other person for him, file for record in the recording precinct where the labor was performed a claim of lien containing a statement of his demand under oath, substantially in the following form: (Act of June 25, 1910, 36 Stat. 848.)

NOTICE OF LABORER'S LIEN.

Territory of Alaska, ——— precinct, ss:

———— ————, claimant, against ———— ————, defendant.

Notice is hereby given that ———— ————, claimant, claims a lien upon (describing the dump or mass of mineral-bearing sands, gravels, earth, or rock, and its location with reasonable certainty) in the —— precinct, in the Territory of Alaska, for labor performed in (digging, and so forth; describe the work). That the name of the owner or reputed owner of said property is ———— ————, and that ———— ———— is the owner or reputed owner of the mine or mining ground from which the dump or mass of mineral-bearing sands, gravels, earth, or rock and the minerals therein were extracted, and that ———— ———— employed claimant to perform such work and labor upon the following terms and conditions (state substance of contract, if any, or reasonable value); that said contract has been faithfully performed and fully complied with on the part of the claimant, who preformed labor thereunder aforesaid for the period of —— days; that said labor was performed between the —— day of ——— and the —— day of ———, and the rendition of said service was closed on the —— day of ———, and 90 days have not elapsed since that time; that the amount of claimant's demand for said service is ———; that no part thereof has been paid (except the sum of ——— dollars), and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ——— dollars, in which amount he claims a lien upon said property.

———— ————,
Claimant.

Territory of Alaska, ——— precinct, ss:

———— ————, being first duly sworn, on oath deposes and says, That I am the claimant (or if by some other person state the fact) named in the foregoing claim; that I have heard the same read, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this —— day of ———.

———— ————
(Officer's title.)

SEC. 166. The recorder must record every claim filed under the provisions of this act in books kept by him for that purpose, which record must be indexed as deeds and other conveyances are required

by law to be indexed, and for which he may receive the following fees and none other: For filing, 10 cents; for recording, $1; for indexing, 15 cents for each name.

SEC. 167. No lien provided for in this act shall bind any property for a longer period than 90 days after the claim has been filed, unless an action be commenced within that time to enforce the same.

SEC. 168. The action for the foreclosure of the lien provided for in this act shall be begun either in the district court or in the justice's court in the precinct where the lien was filed and the justices of the peace in Alaska are hereby given full jurisdiction in the foreclosure of such liens under the provisions of this act, and shall also have such other jurisdiction and power as is now conferred on them by law in aid of the enforcement of this act, and the provisions of section 1555 of chapter 71 of the Code of Civil Procedure now in force in Alaska shall be applicable to the jurisdiction intended to be conferred by this act.

SEC. 169. No mistake, informality, or mere matter of form or lack of statement, either in the lien notice or pleadings, shall be ground for dismissal or unnecessary delay in the action to foreclose the lien, but the lien notice and pleadings may be amended at any time before judgment, and section 924 of chapter 11 of the Code of Civil Procedure now in force in Alaska shall apply to such amendments: Provided, That if it be shown that a material statement or averment has been omitted or misstated, it shall be ground for a reasonable delay or continuance to give the defendant a reasonable opportunity to meet it upon amendment.

SEC. 170. The claimant may file the original or a certified copy of the notice of lien in the district or justice's court as the statement of his case, and thereupon the court or justice shall issue the usual summons directed to the defendant or defendants, which summons, together with a copy of the lien notice, shall, by any officer authorized to serve process, be served upon the defendant or defendants, as provided in sections 1782 and 1783 of chapter 92 of the Code of Civil Procedure now in force in Alaska. The summons shall require the defendant or defendants to appear before such court or justice at a time and a place to be named therein, not less than 6 nor more than 20 days from the date thereof, to answer the demand of the claimant in the said lien notice, or judgment for want of an answer will be taken against them. Service by publication may be had pursuant to sections 879 and 880 of chapter 4 of said Code of Civil Procedure. The officer serving the summons shall also immediately post a copy of said lien notice in a conspicuous place on the dump or mass of mineral-bearing sands, gravels, earth, or rock, and gold and gold dust, and other minerals therein upon which the lien is filed, and from the moment of posting the lien notice the dump or mass of mineral-bearing sands, gravels, earth, and rock, and gold and gold dust, and other minerals therein shall be in the custody and under the control of the officer. All persons who claim any interest therein in opposition to the lien claimant may come in and answer and set up and defend their said claims, but no claim or claims of any owner, lessee, or other adverse defendant shall bar the lien claimant from recovering the sum due him for actual labor in producing the said dump or mass of mineral-bearing sands, gravels, earth, or rock, or gold and gold dust, or other minerals.

SEC. 171. Any number of persons claiming liens under this act may join in the same action, and when separate actions are com-

menced the court may consolidate them. The court shall also allow, as a part of the costs, the moneys paid for filing, recording, and indexing the notice of lien, the sum of $5 for drawing the same, and a reasonable attorney's fee for each person claiming a lien, not to exceed 10 per centum of the amount of the lien established on judgment. Any contract or agreement or any waiver of any kind made or signed by any miner or laborer whereby it is sought to waive or abandon his right to file a lien under this act, or any agreement for an extended time of payment whereby the same end is sought, shall to that extent be null and void as against public policy.

SEC. 172. In such action judgment must be rendered in favor of each person having a laborer's lien for the amount due him, and the court shall order the dump or mass of mineral-bearing sands, gravels, earth, or rock, and the gold and gold dust, and other minerals therein subject to the lien to be sold by the marshal in the same manner that personal property is sold on execution; or the court may, upon a showing that it is necessary to do so to preserve the property from loss or waste, by order require the marshal to wash up or extract the gold and gold dust or other mineral from the said mineral-bearing sands, gravels, earth, or rock; or the court may, by order, allow the defendant or defendants or any party interested to wash up and extract the said mineral, in the presence of the marshal or deputy marshal or special officer, who shall take the gold or gold dust or other minerals as it is washed up and extracted and return the same into court, and it shall be immediately paid out as follows: First, the cost of cleaning up or extracting the gold or gold dust or other minerals shall be paid; second, the court costs shall be paid; and, third, the judgment or judgments so rendered in favor of the lien claimants shall be paid; and if there is not sufficient gold or gold dust, or other minerals, or sufficient moneys obtained from the sale of the property to pay all claims in full, the court shall apportion the proceeds to the payment of such judgments pro rata: Provided, That no part of any such proceeds shall be paid upon any claim or judgment to any person who did not actually perform labor in producing the dump or the proceeds thereof until all such preferred claims are paid in full.

SEC. 173. An appeal may be taken from a final judgment of a justice of the peace in actions instituted under this act to the district court, in the manner provided in chapter 97 of the Code of Civil Procedure now in force in Alaska, and upon such appeal being perfected the dump or mass of mineral-bearing sands, gravels, earth and rock, gold and gold dust, or other minerals shall be washed up by the marshal or any party mentioned in section 172 of this act as the district court may direct, and all the gold or gold dust or other mineral so washed up shall be paid into the registry of the district court, there to await the final judgment on appeal: Provided, That the gold or gold dust of other mineral in excess of the amount of the judgment, including an additional amount equal to the probable accruing costs on appeal and two years' interest at the legal rate, shall, after the expiration of 90 days from the time it was paid into the registry of the district court, be released to the owners upon a showing that no liens have been filed against it. The defendant or defendants, or any one or more of them, may deposit cash in lieu of the gold or gold dust on the dump, which shall remain in the custody of the law until the final judgment, and shall then be applied in payment of the judgment or judgments rendered on each lien claims, and costs, and interest.

SEC. 174. Any person or persons who shall, after the copy of the notice of lien is posted upon any dump or mass of mineral-bearing sands, gravels, earth or rock, gold and gold dust, or other mineral, as provided in this act, and with knowledge of such notice of lien, buy, purchase, wash up, remove, destroy, or carry away all or any part or portion of the same, or the gold or gold dust therein, or who shall render it difficult, uncertain, or impossible to identify the gold or gold dust or other mineral obtained therefrom, shall be liable to the lien holder for the full amount of his judgment and costs; and any person who shall take and carry away all or any part or portion of said dump of mineral-bearing sands, gravels, earth or rock, or the gold or gold dust or other minerals therefrom, after the same shall come into the custody of the officer, shall be guilty of a crime and shall be punished as for the larceny of a like amount; and any district attorney in Alaska is specially required to immediately cause a warrant to be issued for the arrest of any such person or persons and to prosecute them according to law. (Act of June 25, 1910, 36 Stat. 851.)

Sections 164 to 174, inclusive, are 36 Stat. 848, June 25, 1910.

A. ALASKA CIVIL CODE.

1. MINERAL LANDS—JUDICIAL NOTICE.
2. CORPORATIONS—PIPE LINES—APPROPRIATION OF LAND.
3. LIEN ON MINE.
   - a. RIGHT OF LABORER.
   - b. RECOVERY—ATTORNEY'S FEES AND EXPENSES.
   - c. ENFORCING LIEN AGAINST MINE—PLEADING.

1. MINERAL LANDS—JUDICIAL NOTICE.

See secs. 691 to 704, pp. 903–907.

The proof shows and the court takes judicial notice that the Seward Peninsula in Alaska is valuable chiefly for its gold and other mineral deposits, much of it being in benches remote from streams, and that water is essential to the washing out and procuring of the gold.

Van Dyke v. Midnight Sun Min., etc., Co., 177 Fed. 85, p. 88.

2. CORPORATIONS—PIPE LINES—APPROPRIATION OF LAND.

See 34 Stat. 584, p. 1070.

A corporation authorized by its charter to appropriate water and water rights, to build canals, ditches, flumes, and aqueducts, and to lay pipes for supplying mines with water for the general use of the public in the district of Alaska is, upon complying with the requirements of the statute authorizing it to transact business in the District of Alaska, authorized to exercise the right of eminent domain in Alaska and to acquire land for a public pipe line to supply water for mining.

Miocene Ditch Co. v. Lyng, 138 Fed. 544, p. 548.
See Miocene Ditch Co. v. Jacobsen, 146 Fed. 680, p. 683.
Clark v. Nash, 198 U. S. 361.
Nash v. Clark, 27 Utah 158, p. 159.

A corporation organized under the laws of the United States or the laws of any State or Territory on compliance with the requirements of the Civil Code of Alaska is entitled to exercise the right of eminent domain in Alaska and thereby acquire land for a public pipe line to supply water for mining.

Miocene Ditch Co. v. Lyng, 138 Fed. 544, p. 548.

3. LIEN ON MINE.

a. RIGHT OF LABORER.

Under sections 262, 263, and 265, Alaskan Code, a laborer is entitled to a lien for his work in a mine, though the mine is in the possession of and is worked by a lessee, where the lease was not recorded and the work was done for such lessee with the knowledge and consent of the owner, and the owner gave no notice disclaiming his responsibility, as the three sections, when construed together, mean that the person in charge of the work is prima facie deemed to be the agent of the owner, and the property shall be charged with the lien.

Cascaden v. Wimbish, 161 Fed. 241, p. 243.

Where several persons are employed to perform work on a mining claim and in a mine at a stated sum per day and board they are all entitled to a laborer's lien under this statute, though one of them devoted a portion of his time to cooking for himself and the others and the remainder of his time to work on the shafts and tunnels.

Cascaden v. Wimbish, 161 Fed. 241, p. 245.
See McCormick v. Los Angeles City Water Co., 40 Cal. 185.

Laborers employed in a mine are entitled to a lien on the mining property for the time and labor devoted to cleaning up and washing the gold taken out of the mine.

Cascaden v. Wimbish, 161 Fed. 241, p. 246.

b. RECOVERY—ATTORNEY'S FEES AND EXPENSES.

The provisions of section 270 are not unconstitutional or invalid because they permit as a part of the costs, the recovery of all sums paid for the filing and recording of a laborer's lien against a mining claim and the recovery of attorney's fees in an action to enforce the lien against the mining property.

Cascaden v. Wimbish, 161 Fed. 241, p. 244.

c. ENFORCING LIEN AGAINST MINE—PLEADING.

A complaint to enforce a laborer's lien on a mining claim must aver that the labor alleged to have been performed went to the improvement of the particular claim.

Morris v. Marsh, 3 Alaska 146.

SEC. 175. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney General, record separately, in large and well-bound separate books, in fair hand:

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

* * * * * * *

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: Provided, Notices of location of mining claims shall be filed for record within 90 days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument

affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated.

* * * * * * *

* * * Provided, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: Provided further, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act. (Act of June 6, 1900, 31 Stat. 321.)

Charlton Code, pp. 71, 72.

SEC. 176. Native-born citizens of the Dominion of Canada shall be accorded in said District of Alaska the same mining rights and privileges accorded to citizens of he United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said District of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect. (Act of May 14, 1898, 30 Stat. 415.)

Charlton Code, p. 61, sec. 13.

Section 177 includes section 16 of the act of March 3, 1891 (26 Stat. 1095, p. 1101), with town-site acts, p. 1378.
The second part of section 177 is with 26 Stat. 1095, p. 1101, as section 17, p. 1223.
Sections 178, 180, and 181 are parts of 30 Stat. 11, p. 36, and is with 16 Stat. 149, Reservation, p. 1164.
Section 179 is a part of 30 Stat. 11, p. 35, and is with 20 Stat. 88, Timber cutting, p. 1352.
Section 182 is a part of 29 Stat. 526, Oil lands, p. 1043.
Section 183 is a part of 32 Stat. 825, Oil lands, p. 1048.
Section 184 is a part of 36 Stat. 1015, Oil lands, p. 1048.
Section 185 is 31 Stat. 745, Salines, Salt springs, and Lead mines, p. 1213.
Section 186 is section 1 of 27 Stat. 348, Stone lands, p. 1328.

SEC. 187. Any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the District of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing 40, 80, or 160 acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district

in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily indentify the same.

Charlton Code, p. 104, sec. 1.

SEC. 188. Such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor general for the District of Alaska, and a payment of the sum of $10 per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the District of Alaska published nearest the location of the premises for a period of 60 days, and shall have caused copies of such notice, together with a certified copy of the official plat or survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws; Provided, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district. (Act of Apr. 28, 1904, 33 Stat., 525.)

Charlton Code, p. 104, sec. 2.

SEC. 189. During such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein. (Act of Apr. 28, 1904, 33 Stat., 525.)

Charlton Code, p. 104, sec. 3.

SEC. 190. All the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the District of Alaska. (Act of Apr. 28, 1904, 33 Stat., 525.)

Charleston Code, p. 104, sec. 4.

See Sec. 129, p. 871.

Sections 187, 188, 189, 190 are sections 1, 2, 3, 4 of the amendatory act of April 28, 1904, 33 Stat. 525 amending the act of June 6, 1900, 31 Stat. 658. See sections 197 and 214.

31 STAT. 658, JUNE 6, 1900.

COAL-LAND LAWS—ALASKA.

AN ACT To extend the coal-land laws to the District of Alaska.

Be it enacted etc., That so much of the public-land laws of the United States are hereby extended to the District of Alaska as relate to coal lands, namely, sections 2347 to 2352, inclusive, of the Revised Statutes.

See note, sec. 197, p. 890.

32 STAT. 24, p. 26, 1 SUPP. R. S. 420, p. 422, MAY 17, 1884.

COAL-LAND LAWS—ALASKA.

AN ACT Providing a civil government for Alaska.

* * * * * * *

SEC. 8. That the said District of Alaska is hereby created a land district, and a United States land office for said District is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor general of said District, and the laws of the United States relating to mining claims, and the rights incident thereto, shall, from and after the passage of this act, be in full force and effect in said District, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: Provided, That the Indians or other persons in said District shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: And provided further, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid. * * *

A. COAL-LAND LAWS—ALASKA.

1. EXTENSION TO ALASKA—CONSTRUCTION.
2. APPLICATION TO UNSURVEYED LANDS IN ALASKA.
3. NUMBER OF ENTRIES BY ONE ENTRYMAN.
4. PERSONS IN POSSESSION OF COAL MINES—RIGHT TO ENTER LAND.
5. LOCATIONS OF COAL LANDS—QUALIFICATIONS OF LOCATORS.
6. NOTICE OF COAL LOCATION—TIME OF FILING.

1. EXTENSION TO ALASKA—CONSTRUCTION.

Annotations include sections 187–190. See notes, p. 885.

Prior to the passage of this act the coal-land laws of the United States had not been extended to Alaska; and this act provides that "so much of the public-land laws of the

United States are hereby extended to the District of Alaska as relate to coal lands," including sections 2347 to 2352.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 221.

The act of April 28, 1904 (33 Stat. 525) is an amendment to the act of June 6, 1900 (31 Stat. 658), which extended to Alaska so much of the public-land laws as relate to coal.

United States v. Munday, 222 U. S. 175, p. 177.

This statute, not only upon its face and by its title, was an amendment to the existing laws, but section 4 specifically provides that all the provisions of the act shall be in full force in the District of Alaska, and Congress thus saw fit to emphasize its will by declaring that the act in question should not be held to abrogate or repeal an existing law not therein directly expressed.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 225.

It was not the intention of Congress to adopt a new policy with reference to Alaska that would permit the coal lands there to be monopolized, as is clearly indicated by the reports made to that body prior to the passage of this act and as shown by the history of this legislation.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 227.

NOTE.—The act of June 6, 1900 (31 Stat. 658), is not in express terms incorporated in the Alaska Compiled Laws, but sections 2347 to 2352, inclusive, of the Revised Statutes are by this act made applicable to Alaska, and this act and the sections named are to be construed with section 190 of the Alaska Compiled Laws, p. 886, which evidently was intended to accomplish the same effect as the original act of June 6, 1900.

2. APPLICATION TO UNSURVEYED LANDS IN ALASKA.

The act of June 6, 1900 (31 Stat. 658), as extended to Alaska, was inoperative for a time, because the lands of Alaska were unsurveyed, and coal lands under existing laws could be entered only "by legal subdivisions."

United States v. Munday, 222 U. S. 175, p. 181.

The provisions of the coal-land laws were fully extended to Alaska by the act of June 6, 1900 (31 Stat. 658), but no titles could then be acquired to coal lands in that district, because under the provisions of the law a declaratory statement could not be filed upon, nor entry made of unsurveyed lands, and the public-land surveys had not been extended over any part of that country, and the act was therefore ineffectual as applied to Alaska.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 221.

While lawful claims could have been initiated by the discovery of coal and the opening and improving of mines, maintained by possession and protected by filing a declaratory statement therefor without the survey of the land, yet as no base and meridians had been established in Alaska there were no means by which persons locating such claims could force the extension of the public surveys.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 221.

While the coal-land laws were extended to Alaska in all their force and effect by this act, yet it was well known that as a practical question titles could not be acquired, as the lands were not surveyed and the vast extent of that country precluded the possibility that the regular system of surveys could be extended over that country for years to come.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 225.

The act of June 6, 1900 (31 Stat. 658), was amended by the act of April 28, 1904 (33 Stat. 525), making the coal-land statutes applicable to the unsurveyed public lands in Alaska.

United States v. Munday, 222 U. S. 175, p. 179.

The conditions in Alaska covered by the act of April 28, 1904 (33 Stat. 525), were but temporary, and when the coal lands there shall be brought under the system of public surveys this act will cease to be operative.

United States v. Munday, 222 U. S. 175, p. 184.

The purpose of this amendatory act was to permit coal location to be made on unsurveyed lands in Alaska and to cure the defect in the coal-land laws as made applicable to Alaska, but which were in fact inapplicable because authorizing such location only on surveyed public lands and there being at the time no surveyed lands in Alaska.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 222.

It is inconceivable that Congress intended that coal lands in Alaska surveyed after the passage of this act of April 28, 1904 (33 Stat. 525), should be disposed of under the strict provisions of sections 2347 to 2352 of the Revised Statutes, and that the unsurveyed lands might be appropriated without reference whatever to the limitations of these sections.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 226.

Congress by section 4 of the act of April 28, 1904, expressly declared that all laws not inconsistent with the act could remain in full force and effect as applied to Alaska, showing that Congress did not intend to remove all restrictions so as to permit the unsurveyed coal lands in Alaska to be acquired in unlimited quantities.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 225.

3. NUMBER OF ENTRIES BY ONE ENTRYMAN.

The act of June 6, 1900 (31 Stat. 658), and the act of April 28, 1904 (33 Stat. 525), and sections 2347–2352 of the Revised Statutes, are in pari materia and must be construed together, and so construed they do not permit more than one entry by a single qualified entryman.

United States v. Munday, 222 U. S. 175, p. 184.

Congress did not intend to remove the restriction upon more than one entry by the same person, because it imposed no restriction on the power of alienation after the right to patent had accrued.

United States v. Munday, 222 U. S. 175, p. 183.

It was not the intention of Congress by this act to change the uniform policy of the Government as to limitations on the quantity of coal lands subject to entry by one entryman.

United States v. Munday, 222 U. S. 175, p. 182.
Morton v. Nebraska, 88 U. S. 660, p. 669.

The fact that a patent may issue to an entryman or his assigns is not indicative of a purpose to abandon the prohibition upon more than one location, as the prohibition is against more than one entry and not against an assignment.

United States v. Munday, 222 U. S. 175, p. 182.

Aside from the construction given the act of April 28, 1904 (33 Stat. 525), by the land officers and by the Secretary of the Interior, and by at least one court, the act itself can not be said to authorize an association of thirty-three persons to acquire 5,250 acres of the unsurveyed public coal land in Alaska.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 228.

4. PERSONS IN POSSESSION OF COAL MINES—RIGHT TO ENTER LAND.

This amendatory act of April 28, 1904 (33 Stat. 525), provides that qualified persons or associations of persons who had opened or improved a coal mine on any of the unsur-

veyed public lands in Alaska could locate the lands upon which such mine was situated in rectangular tracts containing 40, 80, or 160 acres, and fixed the conditions and price at which the lands could be patented.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 224.

By the act of April 28, 1904, Congress gave relief to the pioneers in Alaska by amending existing laws so as to provide a means by which qualified persons who had opened or improved, or who thereafter might open or improve, a mine or mines of coal on the unsurveyed public lands in Alaska could locate tracts of 160 acres or less and through their own efforts secure the identification thereof in such manner as to permit the claims to pass to patent.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 225.

5. LOCATIONS OF COAL LANDS—QUALIFICATIONS OF LOCATORS.

By this amendatory act persons or associations of persons locating or entering coal lands in the District of Alaska are required to possess the qualifications of persons or associations making entry under the general coal land laws of the United States and are subject to the same limitations.

Scofield, In re (Cunnigham Claims), 41 L. D. 176, p. 226.

6. NOTICE OF COAL LOCATION—TIME OF FILING.

Under this act notices of coal location must be filed within the prescribed time and false dates can not be given to locations actually made for the purpose of bringing them within the year preceding the filing of declaratory statements and notices of claim filed with the local offices.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 232.

NOTE.—The provision of section 8 of the act of May 17, 1884 (23 Stat. 24, 1 Supp. R. S. 430), making Alaska a land district, has been repealed, by implication, at least, by sections 204, 206, and 215, Compiled Laws of Alaska; the second provision of the same section designating Sitka as a residence for the commissioner has been expressly repealed by section 214, Compiled Laws of Alaska, p. 898; the provision of this section making the laws of the United States in force in Alaska is repeated in section 190, Compiled Laws of Alaska, p. 886, which is supplemental to and is to be taken in connection with section 129, Compiled Laws of Alaska, p. 871; but the proviso of section 8, reciting "That parties who have located mines or mining privilege therein under the laws of the United States, applicable to the public domain, or who have occupied and improved, or exercised acts of ownership over mining claims, shall be allowed to perfect their titles to such claims," has evidently not been incorporated literally into the Compiled Laws of Alaska, and evidently has not been repealed expressly or by implication, and the only kindered provision is found in the first clause of section 187, Compiled Laws of Alaska, p. 885, relating to coal mines only.
Sections 191 to 196, inclusive, are 2347 to 2352 R. S. inclusive, pp. 724–782.

SEC. 197. All persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest, prior to November 12, 1906, or in accordance with circular of instructions issued by the Secretary of the Interior May 16, 1907, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed 2,560 acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs or assigns, may form associations or corporations who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: Provided, That no corporation shall be permitted to consolidate its claims under this act unless 75 per centum of its stock shall be held by persons qualified to enter coal lands in Alaska.

SEC. 198. The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened

upon the lands sold under the provisions of this act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

SEC. 199. If any of the lands or deposits purchased under the provisions of this act shall be owned, leased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in any wise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of 2,560 acres in the District of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney General of the United States in the courts for that purpose.

SEC. 200. Every patent issued under this act shall expressly recite the terms and conditions prescribed in sections 198 and 199 hereof.

Sections 197, 198, 199 and 200, inclusive, are sections 1, 2, 3, 4, of the Act of May 28, 1908, 35 Stat. 424. See sections 187, p. 885, and 214, p. 898.

A. ALASKA COAL DEPOSITS.

1. CONSTRUCTION AND APPLICATION OF ACT.
2. DEVELOPMENT AND RELIEF—PURPOSE OF ACT.
3. CONSOLIDATION OF COAL CLAIMS—WHEN PERMITTED.
4. AGREEMENT TO CONSOLIDATE CLAIMS ILLEGAL.

1. CONSTRUCTION AND APPLICATION OF ACT.

This act must be construed in pari materia with the other coal mining statutes and they are all susceptible of a construction which will make all their provisions harmonious, and they are meant to operate together consistently with the evident intent of Congress.

United States v. Doughten, 186 Fed. 226, p. 232.

This act is remedial and curative in its nature and should be construed liberally so as to afford all the relief which the language of the act indicates that Congress intended to grant.

Alaskan Coal Lands, In re, 27 Op. Atty. Genl. 412, p. 419.

While this act can have no retroactive effect and can not render criminal acts which were innocent at the time of their commission, yet it may nevertheless be looked to for the purpose of ascertaining the legislative intent.

United States v. Doughten, 186 Fed. 226, p. 232.

It was said to be the object of this act to enable coal locators in Alaska to consolidate their holdings in such manner as to make possible the development of the coal fields in that region.

Alaskan Coal Lands, In re, 27 Op. Atty. Genl. 412, p. 418.

2. DEVELOPMENT AND RELIEF—PURPOSE OF ACT.

This act, sections 197 to 200, clearly recognizes that the restrictions and limitations applicable to the United States then obtained in Alaska, and the object of this act was to grant relief and provide a means by which these claims could be consolidated and titles thereto acquired by the locators; and that Congress did not intend to depart from its policy is shown by the antimonopoly provisions of section 3 of this act.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 227.

3. CONSOLIDATION OF COAL CLAIMS—WHEN PERMITTED.

By this act all persons who have in good faith made locations of coal lands in Alaska in their own interest prior to November 16, 1906, may consolidate their claims or locations into a single claim not exceeding 2,560 acres, and the benefit of this act can be shared only by persons who made coal land locations in good faith and in their own interest prior to that date.

Alaskan Coal Lands, In re, 27 Op., Atty. Genl. 412, p. 417.

Coal locations in Alaska, made in good faith and in the interest of the locators alone, may lawfully pass to entry and patent, where the locators have, after making their locations, entered into an agreement to consolidate their claims.

Alaskan Coal Lands, In re, 27 Op. Atty. Genl. 412, p. 419.

4. AGREEMENT TO CONSOLIDATE CLAIMS ILLEGAL.

Under this act a verbal agreement entered into between two or more entrymen prior to a coal location, to the effect that upon the issuance of patent the entries were to be consolidated and mined at the equal joint expense of each claimant, was unauthorized, and that such claims were not validated or the locations confirmed by the provisions of this act.

Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 227.

Coal entries can not be completed and patents issued under this act upon locations made prior to November 12, 1906, where there was an existing agreement to transfer the entry to a single corporation and the entryman to accept stock in such corporation in payment for the land, or where there was a contract conveying the land to a corporation in which the entryman had or expected to receive stock in payment of such lands; or where such entries were made under an agreement to convey to a corporation offering to make cash entry under the statute, by consolidating all claims or locations so made, for the reason that under existing laws only one entry by the same person or association of persons is authorized.

Alaskan Coal Lands, In re, 27 Op. Atty. Genl. 412, p. 415.

See United States v. Trinidad Coal Co., 137 U. S. 160; United States v. Keitel, 211 U. S. 370, p. 387.

Section 201 is 35 Stat. 844, with coal sections 2347–2352 R. S., p. 812.
Section 202 is section 6 of the act of July 1, 1902, 32 Stat. 631, amending the act of March 3, 1891, 26 Stat. 1094, and is with sections 2347–2352 R. S. coal lands, p. 806.
Section 203 is a part of 36 Stat. 703, p. 742, with Bureau of Mines, p. 921.

38 STAT. 741, OCTOBER 20, 1914 (PUBLIC—NO. 216—63d CONGRESS).

LEASING OF COAL LANDS.

AN ACT To provide for the leasing of coal lands in the Territory of Alaska, and for other purposes.

Be it enacted, etc., That the Secretary of the Interior be, and hereby is, authorized and directed to survey the lands of the United

States in the Territory of Alaska known to be valuable for their deposits of coal, preference to be given first in favor of surveying lands within those areas commonly known as the Bering River, Matanuska, and Nenana coal fields, and thereafter to such areas or coal fields as lie tributary to established settlements or existing or proposed rail or water transportation lines: Provided, That such surveys shall be executed in accordance with existing laws and rules and regulations governing the survey of public lands. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000 for the purpose of making the surveys herein provided for, to continue available until expended: Provided, That any surveys heretofore made under the authority or by the approval of the Department of the Interior may be adopted and used for the purposes of this act.

SEC. 2. That the President of the United States shall designate and reserve from use, location, sale, lease, or disposition not exceeding 5,120 acres of coal-bearing land in the Bering River field and not exceeding 7,680 acres of coal-bearing land in the Matanuska field, and not to exceed one-half of the other coal lands in Alaska: Provided, That the coal deposits in such reserved areas may be mined under the direction of the President, when, in his opinion, the mining of such coal in such reserved areas, under the direction of the President, becomes necessary, by reason of an insufficient supply of coal at a reasonable price for the requirements of Government works, construction and operation of Government railroads, for the Navy, for national protection, or for relief from monopoly or oppressive conditions.

SEC. 3. That the unreserved coal lands and coal deposits shall be divided by the Secretary of the Interior into leasing blocks or tracts of 40 acres each, or multiples thereof, and in such form as in the opinion of the Secretary will permit the most economical mining of the coal in such blocks, but in no case exceeding 2,560 acres in any one leasing block or tract; and thereafter the Secretary shall offer such blocks or tracts and the coal, lignite, and associated minerals therein for leasing, and may award leases thereof through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, to any person above the age of 21 years who is a citizen of the United States, or to any association of such persons, or to any corporation or municipality organized under the laws of the United States or of any State or Territory thereof: Provided, That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States: And provided further, That no railroad or common carrier shall be permitted to take or acquire through lease or permit under this act any coal or coal lands in excess of such area or quantity as may be required and used solely for its own use, and such limitation of use shall be expressed in all leases or permits issued to railroads or common carriers hereunder: And provided further, That any person, association, or corporation qualified to become a lessee under this act and owning any pending claim under the public-land laws to any coal lands in Alaska may, within one year from the passage of this act, enter into an arrangement with the Secretary of the Interior by which such claim shall be fully relinquished to the United States; and if in the judgment of the Secretary of the Interior, the circumstances connected

with such claim justify so doing, the moneys paid by the claimant or claimants to the United States on account of such claim shall, by direction of the Secretary of the Interior, be returned and paid over to such person, association, or corporation as a consideration for such relinquishment.

All claims of existing rights to any of such lands in which final proof has been submitted and which are now pending before the Commissioner of the General Land Office or the Secretary of the Interior for decision shall be adjudicated within one year from the passage of this act.

SEC. 4. That a person, association, or corporation holding a lease of coal lands under this act may, with the approval of the Secretary of the Interior and through the same procedure and upon the same terms and conditions as in the case of an original lease under this act, secure a further or new lease covering additional lands contiguous to those embraced in the original lease, but in no event shall the total area embraced in such original and new leases exceed in the aggregate 2,560 acres.

That upon satisfactory showing by any lessee to the Secretary of the Inierior that all of the workable deposits of coal within a tract covered by his or its lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the original lease, shall not exceed 2,560 acres, through the same procedure and under the same competitive conditions as in case of an original lease.

SEC. 5. That, subject to the approval of the Secretary of the Interior, lessees holding under leases small blocks or areas may consolidate their said leases or holdings so as to include in a single holding not to exceed 2,560 acres of contiguous lands.

SEC. 6. That each lease shall be for such leasing block or tract of land as may be offered or applied for, not exceeding in area 2,560 acres of land, to be described by the subdivisions of the survey, and no person, association, or corporation, except as hereinafter provided, shall be permitted to take or hold any interest as a stockholder or otherwise in more than one such lease under this act, and any interest held in violation of this proviso shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction, except that any such ownership and interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for two years, and not longer, after its acquisition.

SEC. 7. That any person who shall purchase, acquire, or hold any interest in two or more such leases, except as herein provided, or who shall knowingly purchase, acquire, or hold any stock in a corporation having an interest in two or more such leases, or who shall knowingly sell or transfer to one disqualified to purchase, or except as in this act specifically provided, disqualified to acquire, any such interest, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding $1,000: Provided, That any such ownership and interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held two years after its acquisition and not

longer, and in case of minority or other disability such time as the court may decree.

SEC. 8. That any director, trustee, officer, or agent of any corporation holding any interest in such a lease who shall, on behalf of such corporation, act in the purchase of any interest in another lease, or who shall knowingly act on behalf of such corporation in the sale or transfer of any such interest in any lease held by such corporation to any corporation or individual holding any interest in any such a lease, except as herein provided, shall be guilty of a felony and shall be subject to imprisonment for a term of not exceeding three years and a fine of not exceeding $1,000.

SEC. 8a. If any of the lands or deposits leased under the provisions of this act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, entered into by the lessee, or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of 2,560 acres in the Territory of Alaska, the lease thereof shall be forfeited by appropriate court proceedings.

SEC. 9. That for the privilege of mining and extracting and disposing of the coal in the lands covered by his lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall not be less than 2 cents per ton, due and payable at the end of each month succeeding that of the shipment of the coal from the mine, and an annual rental, payable at the beginning of each year, on the lands covered by such lease, at the rate of 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, and $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases may be for periods of not more than 50 years each, subject to renewal, on such terms and conditions as may be authorized by law at the time of such renewal. All net profits from operation of Government mines, and all royalties and rentals under leases as herein provided, shall be deposited in the Treasury of the United States in a separate and distinct fund to be applied to the reimbursement of the Government of the United States on account of any expenditures made in the construction of railroads in Alaska, and the excess shall be deposited in the fund known as The Alaska Fund, established by the act of Congress of January 27, 1905, to be expended as provided in said last-mentioned act.

SEC. 10. That in order to provide for the supply of strictly local and domestic needs for fuel the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue to any applicant qualified under section 3 of this act a limited license or permit granting the right to prospect for, mine, and dispose of coal belonging to the United States on specified tracts not to exceed 10 acres to any one person or association of persons in any one coal field for a period of not exceeding 10 years, on such conditions not inconsistent with this act as in his opinion will safeguard the public

interest, without payment of royalty for the coal mined or for the land occupied: Provided, That the acquisition of (or) holding of a lease under the preceding sections of this act shall be no bar to the acquisition, holding, or operating under the limited license in this section permitted. And the holding of such a license shall be no bar to the acquisition or holding of such a lease or interest therein.

SEC. 11. That any lease, entry, location, occupation, or use permitted under this act shall reserve to the Government of the United States the right to grant or use such easements in, over, through, or upon the land leased, entered, located, occupied, or used as may be necessary or appropriate to the working of the same or other coal lands by or under authority of the Government and for other purposes: Provided, That said Secretary, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted in so far as said surface is not necessary for use by the lessee in extracting and removing the deposits of coal therein. If such reservation is made, it shall be so determined before the offering of such lease.

That the said Secretary during the life of the lease is authorized to issue such permits for easements herein provided to be reserved, and to permit the use of such other public lands in the Territory of Alaska as may be necessary for the construction and maintenance of coal washeries or other works incident to the mining or treatment of coal, which lands may be occupied and used jointly or severally by lessees or permittees, as may be determined by said Secretary.

SEC. 12. That no lease issued under authority of this act shall be assigned or sublet except with the consent of the Secretary of the Interior. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property, and for the safety and welfare of the miners and for the prevention of undue waste, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions securing the workers complete freedom of purchase, requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to secure fair and just weighing or measurement of the coal mined by each miner, and such other provisions as are needed for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare.

SEC. 13. That the possession of any lessee of the land or coal deposits leased under this act for all purposes involving adverse claims to the leased property shall be deemed the possession of the United States, and for such purposes the lessee shall occupy the same relation to the property leased as if operated directly by the United States.

SEC. 14. That any such lease may be forfeited and canceled by appropriate proceeding in a court of competent jurisdiction whenever the lessee fails to comply with any provision of the lease or of general regulations promulgated under this act; and the lease may provide for the enforcement of other appropriate remedies for breach of specified conditions thereof.

SEC. 15. That on and after the approval of this act no lands in Alaska containing deposits of coal withdrawn from entry or sale shall be disposed of or acquired in any manner except as provided in this act: Provided, That the passage of this act shall not affect any proceeding now pending in the Department of the Interior, and any such proceeding may be carried to a final determination in said department notwithstanding the passage hereof: Provided further, That no lease shall be made, under the provisions hereof, of any land, a claim for which is pending in the Department of the Interior at the date of the passage of this act, until and unless such claim is finally disposed of by the department adversely to the claimant.

SEC. 16. That all statements, representations, or reports required, unless otherwise specified, by the Secretary of the Interior under this act shall be upon oath and in such form and upon such blanks as the Secretary of the Interior may require, and any person making false oath, representation, or report shall be subject to punishment as for perjury.

SEC. 17. That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act.

SEC. 18. That all acts and parts of acts in conflict herewith are hereby repealed.

II. MISCELLANEOUS MINING PROVISIONS.

SEC. 214. That section 8 of an act entitled "An act providing a civil government for Alaska" be, and the same is hereby, amended by striking out the words "the commissioner provided for by this act to reside in Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public moneys, and the marshal provided for by this act shall be ex officio surveyor general of said district."

There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor general for the District of Alaska, embracing one surveying district.

The surveyor general of Alaska shall receive a salary at the rate of $2,000 per annum. (Act of July 24, 1897, 30 Stat. 215.)

SEC. 220. A corporation to be hereafter duly organized under the name and style of the Cordova Bay Harbor Improvement and Town-Site Company, and composed of the following-named persons, to wit: John H. McGraw, Edward Lewin, and Donald A. McKenzie, or any of them, and such others as may hereafter become associated with them as incorporators, shall be permitted to purchase at the price of $2.50 per acre not to exceed 2,000 acres of such nonmineral lands of the United States as may be selected by said corporation and approved by the Secretary of the Interior, including tide or mud flats, situated at the head of Cordova Bay, at approximately latitude 60 degrees and 30 minutes north, and longitude 146 west of Greenwich, in the District of Alaska, the same to be located in as nearly compact form as possible with a front of not to exceed 2 miles on the wharfage and dock area to be reserved by the Secretary of War in order to effect the improvement of said lands for town-site purposes and for the promotion and convenience of commerce with foreign nations and among the several States: Provided, however, That the Secretary of the Interior is hereby authorized and directed to withdraw from all forms of location or entry not to exceed 3,000 acres to be selected by him and surrounding the land hereby made purchasable, subject to future disposition by the Congress. (Act of Feb. 6, 1909, 35 Stat. 598.)

Section 228 is the same as 33 Stat. 628, Right of way, p. 1192.

SEC. 330. From and after the passage of this act the wanton destruction of wild game animals or wild birds, except eagles, ravens, and cormorants, the destruction of nests and eggs of such birds, or the killing of any wild birds, other than game birds, except eagles, for the purposes of selling the same or the skins or any part thereof, except as hereinafter provided, is hereby prohibited.

"Game defined: The term 'game animals' shall include deer, moose, caribou, mountain sheep, mountain goats, brown bear, sea lions, and walrus. The term 'game birds' shall include water fowl, commonly known as ducks, geese, brant, and swans; shore birds, commonly known as plover, snipe, and curlew, and the several species of grouse and ptarmigan.

"Exemptions: Nothing in this act shall affect any law now in force in Alaska relating to the fur seal, sea otter, or any fur-bearing animal, or prevent the killing of any game animal or bird for food or clothing at any time by natives, or by miners or explorers, when in need of food; but the game animals or birds so killed during close season shall not be shipped or sold." (Act of May 11, 1908, 35 Stat. 102.)

SEC. 349. The territory ceded to the United States by Russia by the treaty of March 30, 1867, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Juneau: Provided, That the seat of government shall remain at Sitka until suitable grounds and buildings thereon shall be obtained by purchase or otherwise at Juneau. (Act of June 6, 1900, 31 Stat. 321.)

Carter Code, sec. 1—Charlton Code, sec. 5926.

A. MINING CLAIMS—LOCATION NOTICE—FILING FOR RECORD.

Section 15 requires that notice of the location of a mining claim shall be filed for record within 90 days of the date of discovery, and requires recorders to record affidavits of annual work done on mining claims, notice of mining locations, and declaratory statements.

Smith v. Cascaden, 148 Fed. 792, p. 793.
Sturtevant v. Vogel, 167 Fed. 448, p. 450.
Overgard v. Westerberg, 3 Alaska 168, p. 171.
Cascaden v. Bortolis, 3 Alaska 200, p. 204.
See Charlton v. Kelly, 2 Alaska 532.

Under section 15 the location of a mining claim must be recorded by the recorder of the district in which the claim was located.

Cook v. Klonos, 164 Fed. 529, p. 535.

This statute permits the recording of instruments relating to the location or transfer of mines, but does not provide that the failure to record or to comply with any of the mining rules and regulations shall work a forfeiture of the mining claim.

Sturtevant v. Vogel, 167 Fed. 448, p. 451.
See Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666.
Last Chance Min. Co. v. Bunker Hill, etc., Min., etc., Co., 131 Fed. 579.
McGarrity v. Byington, 12 Cal. 426.
Bell v. Bed Rock, etc., Min. Co., 36 Cal. 214.
King v. Edwards, 1 Mont. 235.

The provision giving 90 days within which to record the location notices is reasonable and necessary in Alaska due to the great distances, bad trails, and rigorous climate and this provision of the statute repeals all mining rules in conflict therewith.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 254.

The provision of section 15 with reference to the filing for record notices of location of mining claims nullified the provisions of the miners in the Golden Gate mining district in force prior to June 6, 1900, the date on which the Alaska Code took effect.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 252.

The clerks of the courts of Alaska have provided recorders with separate books for recording notices and declarations of water rights and such notices have been generally recorded.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 326.

SEC. 379. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney General, record separately, in large and well-bound separate books, in fair hand:

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property.

Second. Certificates of marriage and marriage contracts and births and deaths.

Third. Wills devising real estate admitted to probate.

Fourth. Official bonds.

Fifth. Transcripts of judgments which by law are made liens upon real estate.

Sixth. All orders and judgments made by the district court or the commissioners in probate matters affecting real estate which are required to be recorded.

Seventh. Notices and declaration of water rights.

Eighth. Assignments for the benefit of creditors.

Ninth. Affidavits of annual work done on mining claims.

Tenth. Notices of mining location and declaratory statements.

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: Provided, Notices of location of mining claims shall be filed for record within 90 days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated. (Act of June 6, 1900, 31 Stat. 321, p. 327, 2 Supp. R. S. 1200.)

Carter Code, sec. 15; Charlton Code, sec. 5946.

23 STAT. 24, 1 SUPP. R. S. 430, MAY 17, 1884.

ALASKA CIVIL GOVERNMENT ACT.

AN ACT Providing a civil government for Alaska.

Be it enacted, etc. * * *

* * * * * * *

SEC. 4. That a clerk shall be appointed for said court, who shall be ex officio secretary and treasurer of said District, * * * . He shall be ex officio recorder of deeds and mortgages and certificates of location of mining claims and other contracts relating to real estate and register of wills for said District, and shall establish secure offices in the towns of Sitka and Wrangel, in said district, for the safekeeping of all his official records, and of records concerning the reformation and establishment of the present status of titles to lands, as hereinafter directed: Provided, That the district court hereby created may direct, if it shall deem it expedient, the establishment of separate offices at the settlements of Wrangel, Oonalashka, and Juneau City, respectively, for the recording of such instruments as may pertain to the several natural divisions of said District most convenient to said

settlements, the limits of which shall, in the event of such direction, be defined by said court; and said offices shall be in charge of the commissioners respectively as hereinafter provided. * * *

Section 379 evidently repeals by implication section 4 of the Alaska civil government act (23 Stat. 24), and the duties devolving upon the clerk as ex officio recorder of instruments are now required to be performed by recorders.

SEC. 380. Any clerk or commissioner authorized to record any instrument who having collected fees for so doing fails to record such instrument shall account to his successor in office, or to such person as the court may direct, for all the fees received by him for recording any instrument on file and unrecorded at the expiration of his official term, or at the time he is required to transfer his records to another officer under the direction of the court. And any clerk or commissioner who fails, neglects, or refuses to so account for fees received and not actually earned by the recording of instrument shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than $100 nor more than $1,000, and imprisoned for not more than one year, or until the fees received and unearned as aforesaid shall have been properly accounted for and paid over by him, as hereinbefore provided. And in addition such fees may be recovered from such clerk or commissioner or the bondsmen of either, in a civil action which shall be brought by the district attorney, in the name of the United States, to recover the same; and the amount when recovered shall be by the court transferred to the successor in office of such recorder, who shall thereupon proceed to record the unrecorded instruments: Provided, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites, and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: Provided further, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act. (Act of June 6, 1900, 31 Stat. 321, p. 328; 2 Supp. R. S. 1200.)

Carter Code, sec. 16; Charlton Code, sec. 5947.

A. MINERS' REGULATIONS—VALIDITY.

Section 16 of the original act prohibits the miners in any district from enacting and enforcing rules in conflict with mining statutes and it therefore repeals existing rules of miners in conflict with the provisions of this statute.

Butler v. Good Enough Min. Co., 1 Alaska 246, p. 253.

This act, supplementing section 2324 R. S., authorizes miners in any organized mining district to make rules and regulations governing the recording of location notices.

McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, p. 320.

SEC. 416. The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents; nor shall the legislature grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the affirmative approval of Congress; nor shall the legislature pass local or special laws in any of the cases enumerated in the act of July 30, 1886; nor shall it grant private charters or special privileges, but it may, by general act, permit persons to associate themselves together as bodies corporate for manufacturing, mining, agricultural, and other industrial pursuits, and for the conduct of business of insurance, savings banks, banks of discount and deposit (but not of issue), loans, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association, but the authority embraced in this section shall only permit the organization of corporations or associations whose chief business shall be in the Territory of Alaska. (Act of July 30, 1886, 37 Stat. 512.)

SEC. 425. That an officer of the Engineer Corps of the United States Army, a geologist in charge of Alaska surveys, an officer in the Engineer Corps of the United States Navy, and a civil engineer who has had practical experience in railroad construction and has not been connected with any railroad enterprise in said Territory be appointed by the President as a commission hereby authorized and instructed to conduct an examination into transportation question in the Territory of Alaska; to examine railroad routes from the seaboard to the coal fields and to the interior and navigable waterways; to secure surveys and other information with respect to railroads, including cost of construction and operation; to obtain information in respect to the coal fields and their proximity to railroad routes; and to make report of the facts to Congress on or before the 1st day of December, 1912, or as soon thereafter as may be practicable, together with their conclusions and recommendations in respect to the best and most available routes for railroads in Alaska which will develop the country and the resources thereof for the use of the people of the United States: Provided further, That the sum of $25,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the expenses of said commission. (Act of July 30, 1886, 37 Stat. 512.)

SEC. 633. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

* * * * * * *

(3) Public buildings and grounds for the use of any precinct, city, town, village, school, district or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any precinct, city, town, or other municipal division, whether incor-

porated or unincorporated; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any precinct, city, town, or other municipal division, whether incorporated or unincorporated, or the inhabitants thereof, which may be authorized by Congress or other legislative authority of the district.

(4) Wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water.

(5) Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water.

(6) Private roads leading from highways to residences, mines, or farms.

* * * * * * *

(10) Tramway lines. (Act of June 6, 1900, 31 Stat. 494, p. 522.)

SEC. 691. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other persons performing labor upon or furnishing material, of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, shall have a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of this code. (Act of June 6, 1900, 31 Stat. 494, p. 534.)

Carter Code, sec. 262; Charlton Code, sec. 262.

SEC. 692. The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof (to be determined by the judgment of the court at the time of the foreclosure of such lien), and the mine on which the labor was performed or for which the material was furnished shall also be subject to the liens created by this code if, at the time the work was commenced or the materials for the same had been commenced to be furnished, the land belonged to the person who caused the building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein shall be subject to such lien; and in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his rights thereto, the purchaser of such

building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this code, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and costs due under the lease, unless the lessor shall have regained possession of the land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereof; in which event the purchaser shall have the right only to remove the building or other improvement within 30 days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal. (Act of June 6, 1900, 31 Stat. 494, p. 534.)

SEC. 693. A lien created by this code upon any parcel of land shall be preferred to any lien, mortgage, or other incumbrance which may have attached to the land subsequent to the time when the building or other improvement was commenced, or the materials were commenced to be furnished and placed upon or adjacent to the land; also to any lien, mortgage, or other incumbrance which was unrecorded at the time when the building, structure, or other improvement was commenced, or other materials for the same were commenced to be furnished and placed upon or adjacent to the land; and all liens created by this code upon any building or other improvements shall be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which the building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien, such building or other improvement may be sold separately from the land, and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal: Provided, If such removal be prevented by legal proceedings, the 30 days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal be taken. (Act of June 6, 1900, 31 Stat. 494, p. 535.)

Carter Code, sec. 264; Charlton Code, sec. 264.

SEC. 694. Every building or other improvement mentioned in section 691, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this code, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon the land, or upon the building or other improvement situated thereon. (Act of June 6, 1900, 31 Stat. 494, p. 535.)

Carter Code, sec. 265; Charlton Code, sec. 265.

SEC. 695. It shall be the duty of every original contractor, within 60 days after the completion of his contract, and of every mechanic,

artisan, machinist, builder, lumber merchant, laborer, or other person, save the original contractor, claiming the benefit of this code, within 30 days after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts. (Act of June 6, 1900, 31 Stat. 494, p. 535.)

Carter Code, sec. 266; Charlton Code, sec. 266.

SEC. 696. The recorder shall record the claim in a book kept for that purpose, which records shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments. (Act of June 6, 1900, 31 Stat. 494, p. 536.)

Carter Code, sec. 267; Charlton Code, sec. 267.
NOTE.—See sec. 379, Political Code.

SEC. 697. No lien provided for in this code shall bind any building, structure, or other improvement for a longer period than six months after the same shall have been filed, unless suit be brought before the proper court within that time to enforce the same, or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit. (Act of June 6, 1900, 31 Stat. 494, p. 536.)

Carter Code, sec. 268; Charlton Code, sec. 268.

SEC. 698. Any person who shall, at the request of the owner of any lot in the District, grade, fill in, or otherwise improve the same or the street in front of or adjoining the same, shall have a lien upon such lot for his work done and materials furnished in the grading, filling in, or otherwise improving the same; and all the provisions of this code respecting the securing and enforcing the mechanic's lien shall apply thereto. (Act of June 6, 1900, 31 Stat. 494, p. 536.)

Carter Code, sec. 269; Charlton Code, sec. 269.

SEC. 699. Actions to enforce the liens created by this code shall be brought before the district court, and the pleadings, process, practice, and other proceedings shall be the same as in other cases. In case the proceeds of any sale under this code shall be insufficient to pay all lien holders under it, the liens of all persons other than the original contractor (and subcontractors) shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the subcontractor shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid to the original contractor; and each claimant shall be entitled to execution for any balance due him after such distribution, such execution to be issued by the clerk of the district court,

upon demand, after the return of the marshal or other officer making the sale showing such balance due.

In all actions under this chapter the district court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien, and also a reasonable amount as attorney's fees. All actions to enforre any lien created by this code shall have preference upon the calendar of civil actions brought before the district court and shall be tried without unnecessary delay.

In all actions to enforce any lien created by this chapter all persons personally liable and all lien holders whose claims have been filed for record under the provisions of section 695 shall, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien may, be made parties; but such as are not made parties shall not be bound by such proceedings. The proceedings upon the foreclosure of the liens created by this code shall be, as nearly as possible, made to conform to the proceedings of a foreclosure of a mortgage lien upon real property. (Act of June 6, 1900, 31 Stat. 494, p. 536.)

SEC. 700. No payment by the owner of the building or structure to any original contractor or subcontractor, made before 30 days from the completion of the building, shall be valid for the purpose of defeating or discharging any lien created by this chapter in favor of any workman, laborer, lumber merchant, or material man, unless such payment so made by the owner of the building or structure to such original contractor or subcontractor has been distributed among such workmen, laborers, lumber merchants, or material men, or, if distributed in part only, then the same shall be valid only to the extent the same has been so distributed. (Act of June 6, 1900, 31 Stat. 494, p. 536.)

SEC. 701. Any contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a lien shall be filed under this chapter for work done or materials furnished to any contractor he shall defend any action brought thereupon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the liens the owner shall be entitled to deduct from any amount due or about to become due by him to the contractor the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the owner, in excess of the contract price, and for which the contractor was originally the party liable. (Act of June 6, 1900, 31 Stat. 494, p. 537.)

Carter Code, sec. 272; Charlton Code, sec. 272.

SEC. 702. Whenever any mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or other improvement, such materials

shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials except a debt due for the purchase money thereof, so long as in good faith the same have been or are about to be applied to the construction, alteration, or repair of such building, structure, or other improvement. (Act of June 6, 1900, 31 Stat. 494, p. 537.)

Carter Code, sec. 273; Charlton Code, sec. 273.

SEC. 703. The words "building or other improvement," wherever the same are used in this chapter, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," wherever the same are used herein, shall be held to include partial construction, and all repairs done in and upon any building or other improvement. (Act of June 6, 1900, 31 Stat. 494, p. 537.)

Carter Code, sec. 274; Charlton Code, sec. 274.

SEC. 704. Nothing contained in this chapter shall affect any lien heretofore acquired, but the same may be enforced by the provisions of this chapter; and where actions are now pending the proceedings, after this chapter goes into effect, may be conducted according to this chapter. (Act of June 6, 1900, 31 Stat. 494, p. 537.)

Carter Code, sec. 275; Charlton Code, sec. 275.
Sections 691 to 704, inclusive, are sections 262 to 275, inclusive, of the Civil Code for the District of Alaska. See sections 164 and 174.

SEC. 798. Three or more adult persons, bona fide residents of the District of Alaska, may form a corporation in the manner and subject to the limitations provided in this chapter for the following purposes, to wit:

"First. To construct, own, and operate railroads, tramways, street railways, wagon roads, canals, flumes, and telegraph and telephone lines in Alaska.

"Second. To acquire, hold, and operate mines in Alaska.

"Third. To carry on the fishery industry in all its branches in Alaska and in the waters contiguous and adjacent thereto.

"Fourth. To construct and operate smelters, electric and other power and lighting plants, docks, wharves, elevators, warehouses, and hotels in Alaska.

"Fifth. To carry on trade, transportation, agriculture, lumbering, and manufacturing in Alaska." (Act of May 2, 1903, 32 Stat. 947.)

Charlton Code, sec. 1, page 88.

SEC. 836. The periods prescribed in section 835 of this act for the commencement of actions shall be as follows:

Within 10 years actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such revovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within 10 years before the commencement of the action: Provided, In all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within one year from the approval

of this act, an action may be brought on such cause of action within one year from the date of the approval of the act. (Act of June 6, 1900, 31 Stat. 321, p. 334.)

Carter Code, sec. 4; Charlton Code, sec. 4.

A. RECOVERY OF POSSESSION OF MINING CLAIMS.

1. TIME OF BEGINNING ACTION.
2. POSSESSION OF MINING CLAIM FOR TEN YEARS—EFFECT AND RIGHTS.

A. RECOVERY OF POSSESSION OF MINING CLAIM.

1. TIME OF BEGINNING ACTION.

An action to recover possession of a mining claim in Alaska is not barred by the period of limitation where it is brought within one year from the approval of the act, as provided in section 4, title two of Alaska Civil Government Act.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, 136 Fed. 124, p. 126.
Reversing Tyee Consol. Min. Co. v. Langstedt, 121 Fed. 709.
See Tyee Consol. Min. Co. v. Jennings, 137 Fed. 863, p. 865.

2. POSSESSION OF MINING CLAIM FOR TEN YEARS—EFFECT AND RIGHTS.

A person who retains the possession of any part of the surface ground of a mining claim and occupies the same continuously for a period of 10 years or more after the location of the claim and before patent issues may successfully plead the statute of limitations in resisting the mining claimant's action in ejectment or for possession, and may plead the same after patent has issued, though the 10 years required to be pleaded by the statute have not expired since patent issued, but had in part run before patent and after location, as the statute begins to run from the time of the location and not from the date of the patent.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 467; 136 Fed. 124.

SEC. 867. No action shall abate by the death or disability of a party or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representatives or successor in interest. (Act of June 6, 1900, 31 Stat. 321, p. 391.)

Carter Code, sec. 35; Charlton Code, sec. 35.

A. SURVIVAL OF ACTION TO DETERMINE ADVERSE MINING CLAIM.

An action against two defendants to determine an adverse claim to mining property survives the death of one of such defendants and such action must be continued, tried, and determined as against the surviving defendant.

Mackay v. Fox, 121 Fed. 487.

SEC. 1133. Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual posses-

sion of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof. (Act of June 6, 1900, 31 Stat. 321, p. 383.)

Carter Code, sec. 301; Charlton Code, sec. 301.

A. ACTION TO MAINTAIN POSSESSORY RIGHT TO MINING CLAIM.

Under section 301 Alaska Civil Government Act (31 Stat. 321, p. 383), a person may maintain an action to recover possession of a mining claim.

Tyee Consol. Min. Co. v. Langstedt, 1 Alaska 439, p. 452.

A locator of a mining claim in Alaska who is living upon the claim in a tent, and who has begun to sink a shaft on such claim as a preliminary step in prospecting or developing the same as a mining claim, is a person in possession under section 475 and may maintain a suit under this statute against an adverse claimant.

Lange v. Robinson, 148 Fed. 799, p. 804.
See Sepulveda v. Sepulveda, 39 Cal. 13.
Durrell v. Abbott, 6 Wyo. 265, 44 Pac. 647.
Charlton v. Kelley, 156 Fed. 433, p. 437.

SEC. 1184. All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives. (Act of June 6, 1900, 31 Stat. 321, p. 391.)

Carter Code, sec. 352; Charlton Code, sec. 352.

SEC. 1307. Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest. (Act of June 6, 1900, 31 Stat. 410, p. 411.)

Carter Code, sec. 475; Charlton Code, sec. 475.

SEC. 1946. That if any person shall willfully cut down, destroy, or injure any standing or growing tree upon the lands of another, or shall willfully take or remove from any such lands any timber or wood previously cut or severed from the same, or shall willfully dig, take, quarry, or remove from any such lands any mineral, earth, or stone, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than one thousand dollars. (Act of Mar. 3, 1899, 30 Stat. 1253, p. 1262. See 4 Stat. 472, Timber-cutting acts.)

Carter Code, sec 66; Charlton Code, sec. 66.

SEC. 1955. That any person who shall break or rob in any manner or who shall attempt to break or rob any flume, rocker, quartz, quartz vein, or lode, bedrock, sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim, with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one nor more than five

years, or by fine not less than one hundred nor more than one thousand dollars, or by both such imprisonment and fine. (Act of Mar. 3, 1899, 30 Stat. 1253, p. 1263.)

Carter Code, sec. 75; Charlton Code, sec. 75.

SEC. 2569. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:

* * * * * * *

Mines: Quartz mills, $3 per stamp per year. (Act of June 6, 1900, 31 Stat. 331, amending 30 Stat. 1336.)

29 STAT. 618, 2 SUPP. R. S. 573, p. 574, MARCH 2, 1897.

ALIENS ACQUIRING MINING CLAIMS.

AN ACT To better define and regulate the rights of aliens to hold and own real estate in the Territories, etc.

Be it enacted, etc. * * *.

SEC. 2. That this act shall not apply to land now owned in any of the Territories of the United States by aliens, which was acquired on or before March 3, 1887, so long as it is held by the then owners, their heirs or legal representatives, nor to any alien who shall become a bona fide resident of the United States, and any alien who shall become a bona fide resident of the United States, or shall have declared his intention to become a citizen of the United States in the manner provided by law, shall have the right to acquire and hold lands in either of the Territories of the United States upon the same terms as citizens of the United States: Provided, That if any such resident alien shall cease to be a bona fide resident of the United States then such alien shall have 10 years from the time he ceases to be such bona fide resident in which to alienate such lands. This act shall not be construed to prevent any persons not citizens of the United States from acquiring or holding lots or parcels of lands in any incorporated or platted city, town, or village, or in any mined or mining claim, in any of the Territories of the United States.

A. ALIENS MAY LOCATE MINING CLAIMS IN ALASKA.

This statute in its application to Alaska permits aliens or persons who shall become bona fide residents of the United States to acquire title to the lands or mining claims by purchase.

Shea v. Nilima, 133 Fed. 209, p. 216.

Under this statute a court has no power to inquire into and to determine the question of citizenship of the locator of a mining claim in the District of Alaska.

Tornanses v. Nelsing, 109 Fed. 710, p. 712.

37 STAT. 417, p. 456, AUGUST 24, 1912.

MINERAL LANDS—SURVEY.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 13, 1913.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1913:

For continuation of the investigation of the mineral resources of Alaska, $90,000; * * *.

PROCLAMATIONS BY THE PRESIDENT.

SEC. 234. Whereas, it appears that the public good would be promoted by excluding certain lands from the Alexander Archipelago National Forest, in the Territory of Alaska, established by proclamation issued August 20, 1902;

* * * * * * *

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: Provided, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force, not excepting from the force and effect of this proclamation, however, any part of the aforesaid national forest which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: And provided, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation. (July 20, 1907, 35 Stat. 2148.)

* * * * * * *

SEC. 235. Whereas, the public lands in the Territory of Alaska, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by utilizing said lands as a national forest;

* * * * * * *

And further excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal

or reservation for any use or purpose with which this reservation for forest uses is inconsistent: Provided, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the national forest hereby established which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: And Provided, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation. (July 23, 1907, 35 Stat. 2149.)

* * * * * * *

SEC. 236. Whereas, the public lands in the Territory of Alaska, which are hereinafter indicated, are in part covered with timber, and it appears that the public good would be promoted by utilizing said lands as a national forest;

* * * * * * *

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: Provided, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the national forest hereby established which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: And provided, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation. (Sept. 10, 1907, 35 Stat. 2152.)

* * * * * * *

SEC. 237. Whereas, it appears that the public good would be promoted by excluding certain lands from the Chugach National Forest, in the Territory of Alaska, established by proclamation issued July 23, 1907.

* * * * * * *

And further excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States land office, or upon which any valid settle-

ment has been made pursuant to law, if the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose with which this reservation for forest uses is inconsistent: Provided, That these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal with which this reservation is inconsistent continues in force; not excepting from the force and effect of this proclamation, however, any part of the aforesaid national forest which may have been withdrawn to protect the coal therein, but this proclamation does not vacate any such coal land withdrawal: And provided, That these exceptions shall not apply to any land embraced in any selection, entry, or filing, which may have been permitted to remain of record subject to the creation of a permanent reservation. (Sept. 18, 1907, 35 Stat. 2153.)

* * * * * * *

BANKRUPTCY.

30 STAT. 544, p. 547, JULY 1, 1898.

BANKRUPTS.

AN ACT To establish a uniform system of bankruptcy.

Be it enacted, etc. * * *

SEC. 4. WHO MAY BECOME BANKRUPTS.— (a) * * *.

(b) Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuit, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial. * * *

A. MINING CORPORATIONS—BANKRUPTCY.

A corporation organized for the purpose of manufacturing building stone, ornamental stone, paving stone, monuments, and other forms of manufactured stone from granite and other kinds of stone, and for that purpose quarrying, cutting, dressing, carving, and otherwise fashioning granite and other kinds of stone, is chiefly engaged in mining and manufacturing within the meaning of this amended section and is subject to involuntary bankruptcy proceedings.

Quincy Granite Quarries Co., In re, 147 Fed. 279.

32 STAT. 797, FEBRUARY 5, 1903.

BANKRUPT LAW—MINING COMPANIES.

AN ACT To amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898.

Be it enacted, etc. * * *

SEC. 3. That subdivision b of section 4 of said act be, and the same is hereby, amended so as to read as follows:

"b. Any natural person, except a wage earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, mining, or merçantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or impartial trial, and shall be subject to the provisions and entitled to the benefits of this act." * * *

A. BANKRUPT ACT.

1. APPLICATION TO MINING COMPANIES.
2. "MINING"—MEANING AS USED IN THIS ACT.
3. MINING AND QUARRYING—DISTINCTION.
4. MINING—WORKINGS ABOVE AND BELOW GROUND.
5. ACTS OF BANKRUPTCY.

1. APPLICATION TO MINING COMPANIES.

A mining company organized for operating a mine and getting precious metals from it can not be said to be engaged in any species of trading and is not a corporation which engages in the general business of buying and selling goods within the meaning of section 4 of the bankruptcy act.

Elk Park Min., etc., Co., In re, 101 Fed. 422.
Rollins Gold & Silver Min. Co., In re, 102 Fed. 982.
Chicago-Joplin Lead & Zinc Co., In re, 104 Fed. 67.
Woodside Coal Co., In re, 105 Fed. 56.
Keystone Coal Co., In re, 109 Fed. 872.
See Quincy Granite Quarries Co., In re, 147 Fed. 279.

The fact that a mining corporation buys or sells ore in connection with its business of mining is not sufficient to bring it within section 4 of the bankruptcy act.

Chicago-Joplin Lead & Zinc Co., In re, 104 Fed. 67.

2. "MINING"—MEANING AS USED IN THIS ACT.

The word "mining" in this statute is not to be understood in the strict sense, but is intended to include quarrying or surface operations and such operations are properly included in mining.

Matthews Consol. Slate Co., In re, 144 Fed. 724, p. 735.
Burdick v. Dillon, 144 Fed. 737.
See Midland Railway v. Robinson, 15 App. Cas. (D. C.) 19.

3. MINING AND QUARRYING—DISTINCTION.

For the purpose of this act distinctions between the classes of mines and methods of working are immaterial and an attempt to distinguish between mining and quarrying would lead to no useful result as to the construction of the statute.

Burdick v. Dillon, 144 Fed. 737, p. 741.

A corporation engaged in quarrying and preparing slate for commercial use is engaged both in mining and manufacturing and comes within this section of the bankruptcy act.

Matthews Consol. Slate Co., In re, 144 Fed. 724, p. 736.

4. MINING—WORKINGS ABOVE AND BELOW GROUND.

The word "mining" includes placer mines in which the workings are open, and hence the question whether an enterprise is mining or not can not be determined by an inquiry as to whether the workings are open or underground.

Burdick v. Dillon, 144 Fed. 737, p. 741.

5. ACTS OF BANKRUPTCY.

A resolution adopted by the board of directors of a mining corporation admitting its inability to pay its debts and its willingness to be adjudged a bankrupt is not an act of bankruptcy within the meaning of the bankrupt law unless such authority is expressly conferred by the stockholders upon the board of directors for such purpose.

Quartz Gold Min. Co., In re, 157 Fed. 243, p. 245.
Creason & Clearfield Coal Co. v. Stauffer, 148 Fed 981.

BUREAU OF MINES.

36 STAT. 369, MAY 16, 1910.

ORGANIC ACT.

AN ACT To establish in the Department of the Interior a Bureau of Mines.

Be it enacted, etc., That there is hereby established in the Department of the Interior a bureau, to be called the Bureau of Mines, and a director of said bureau, who shall be thoroughly equipped for the duties of said office by technical education and experience and who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive a salary of $6,000 per annum; and there shall also be in the said bureau such experts and other employees as may from time to time be authorized by Congress.

SEC. 2. That it shall be the province and duty of said bureau and its director, under the direction of the Secretary of the Interior, to make diligent investigation of the methods of mining, especially in relation to the safety of miners, and the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the treatment of ores and other mineral substances, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to said industries, and from time to time make such public reports of the work, investigations, and infomation obtained as the Secretary of said department may direct, with the recommendations of such bureau.

SEC. 3. That the Secretary of the Interior shall provide the said bureau with furnished offices in the city of Washington, with such books, records, stationery, and appliances, and such assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this act upon such bureau, fixing the compensation of such clerks and employees within appropriations made for that purpose.

SEC. 4. That the Secretary of the Interior is hereby authorized to transfer to the Bureau of Mines from the United States Geological Survey the supervision of the investigations of structural materials and the analyzing and testing of coals, lignites, and other mineral fuel substances and the investigation as to the causes of mine explosions; and the appropriations made for such investigations may be expended under the supervision of the Director of the Bureau of Mines in manner as if the same were so directed in the appropriations acts; and such investigations shall hereafter be within the province of the Bureau of Mines, and shall cease and determine under the organization of the United States Geological Survey; and such experts, employees, property, and equipment as are now employed or used by the Geological Survey in connection with the subjects herewith transferred to the Bureau of Mines are directed to be transferred to said bureau.

SEC. 5. That nothing in this act shall be construed as in any way granting to any officer or employee of the Bureau of Mines any right or authority in connection with the inspection or supervision of mines or metallurgical plants in any State.

SEC. 6. This act shall take effect and be in force on and after the 1st day of July, 1910.

A. BUREAU OF MINES—ORGANIC ACT.

1. PURCHASE OF LAND FOR MINE RESCUE CARS.

Under the act of June 25, 1910 (36 Stat. 742), making provisions for the maintenance of the Bureau of Mines, the purchase of lands for the use of the bureau or for mine rescue stations was authorized.

Mine Rescue Work, In re, 28 Op. Atty. Gen. 413, p. 415.

37 STAT. 681, FEBRUARY 25, 1913.

AMENDED ORGANIC ACT.

AN ACT To amend an act entitled "An act to establish in the Department of the Interior a Bureau of Mines," approved May 16, 1910.

Be it enacted, etc., That the act to establish in the Department of the Interior a Bureau of Mines, approved May 16, 1910 (36 Stat. 369), be, and the same is hereby, amended to read as follows:

"That there is hereby established in the Department of the Interior a bureau of mining, metallurgy, and mineral technology, to be designated the Bureau of Mines, and there shall be a director of said bureau, who shall be thoroughly equipped for the duties of said office by technical education and experience and who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive a salary of $6,000 per annum; and there shall also be in the said bureau such experts and other employees, to be appointed by the Secretary of the Interior, as may be required to carry out the purposes of this act in accordance with the appropriations made from time to time by Congress for such purposes.

"SEC. 2. That it shall be the province and duty of the Bureau of Mines, subject to the approval of the Secretary of the Interior, to conduct inquiries and scientific and technologic investigations concerning mining, and the preparation, treatment, and utilization of mineral substances with a view to improving health conditions, and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; to inquire into the economic conditions affecting these industries; to investigate explosives and peat; and on behalf of the Government to investigate the mineral fuels and unfinished mineral products belonging to, or for the use of, the United States, with a view to their most efficient mining, preparation, treatment, and use; and to disseminate information concerning these subjects in such manner as will best carry out the purposes of this act.

"SEC. 3. That the director of said bureau shall prepare and publish, subject to the direction of the Secretary of the Interior, under the appropriations made from time to time by Congress, reports of inquiries and investigations, with appropriate recommendations of

the bureau, concerning the nature, causes, and prevention of accidents, and the improvement of conditions, methods, and equipment, with special reference to health, safety, and prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; the use of explosives and electricity, safety methods and appliances, and rescue and first-aid work in said industries; the causes and prevention of mine fires; and other subjects included under the provisions of this act.

"SEC. 4. In conducting inquiries and investigations authorized by this act neither the director nor any member of the Bureau of Mines shall have any personal or private interest in any mine or the products of any mine under investigation, or shall accept employment from any private party for services in the examination of any mine or private mineral property, or issue any report as to the valuation or the management of any mine or other private mineral property: Provided, That nothing herein shall be construed as preventing the temporary employment by the Bureau of Mines, at a compensation not to exceed $10 per day, in a consulting capacity or in the investigation of special subjects, of any engineer or other expert whose principal professional practice is outside of such employment by said bureau.

"SEC. 5. That for tests or investigations authorized by the Secretary of the Interior under the provisions of this act, other than those performed for the Government of the United States or State governments within the United States, a reasonable fee covering the necessary expenses shall be charged, according to a schedule prepared by the Director of the Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts.

"SEC. 6. That this act shall take effect and be in force on and after its passage."

35 STAT. 556, MAY 30, 1908.

COMPENSATION FOR INJURED EMPLOYEES.

AN ACT Granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment.

Be it enacted, etc., That when, on or after August 1, 1908, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, is injured in the course of such employment, such employee shall be entitled to receive for one year thereafter, unless such employee, in the opinion of the Secretary of Commerce and Labor, be sooner able to resume work, the same pay as if he continued to be employed, such payment to be made under such regulations as the Secretary of Commerce and Labor may prescribe: Provided, That no compensation shall be paid under this act where the injury is due to the negligence or misconduct of the employee injured, nor unless said injury shall continue for more than 15 days.

All questions of negligence or misconduct shall be determined by the Secretary of Commerce and Labor.

SEC. 2. That if any artisan or laborer so employed shall die during the said year by reason of such injury received in the course of such employment, leaving a widow, or a child or children under 16 years of age, or a dependent parent, such widow and child or children and dependent parent shall be entitled to receive, in such portions and under such regulations as the Secretary of Commerce and Labor may prescribe, the same amount, for the remainder of the said year, that said artisan or laborer would be entitled to receive as pay if such employee were alive and continued to be employed: Provided, That if the widow shall die at any time during the said year her portion of said amount shall be added to the amount to be paid to the remaining beneficiaries under the provisions of this section, if there be any.

SEC. 3. That whenever an accident occurs to any employee embraced within the terms of the first section of this act, and which results in death or a probable incapacity for work, it shall be the duty of the official superior of such employee to at once report such accident and the injury resulting therefrom to the head of his bureau or independent office, and his report shall be immediately communicated through regular official channels to the Secretary of Commerce and Labor. Such report shall state, first, the time, cause, and nature of the accident and injury and the probable duration of the injury resulting therefrom; second, whether the accident arose out of or in the course of the injured person's employment; third, whether the accident was due to negligence or misconduct on the part of the employee injured; fourth, any other matters required by such rules and regulations as the Secretary of Commerce and Labor may prescribe. The head of each department or independent office shall have power, however, to charge a special official with the duty of making such reports.

SEC. 4. That in the case of any accident which shall result in death, the persons entitled to compensation under this act or their legal representatives shall, within 90 days after such death, file with the Secretary of Commerce and Labor an affidavit setting forth their relationship to the deceased and the ground of their claim for compensation under the provisions of this act. This shall be accompanied by the certificate of the attending physician setting forth the fact and cause of death, or the nonproduction of the certificate shall be satisfactorily accounted for. In the case of incapacity for work lasting more than 15 days, the injured party desiring to take the benefit of this act shall, within a reasonable period after the expiration of such time, file with his official superior, to be forwarded through regular official channels to the Secretary of Commerce and Labor, an affidavit setting forth the grounds of his claim for compensation, to be accompanied by a certificate of the attending physician as to the cause and nature of the injury and probable duration of the incapacity, or the nonproduction of the certificate shall be satisfactorily accounted for. If the Secretary of Commerce and Labor shall find from the report and affidavit or other evidence produced by the claimant or his or her legal representatives, or from such additional investigation as the Secretary of Commerce and Labor may direct, that a claim for compensation is established under this act, the compensation to be paid shall be determined as provided under this act and approved for payment by the Secretary of Commerce and Labor.

SEC. 5. That the employee shall, whenever and as often as required by the Secretary of Commerce and Labor, at least once in six months, submit to medical examination, to be provided and paid for under the direction of the Secretary, and if such employee refuses to submit to or obstructs such examination his or her right to compensation shall be lost for the period covered by the continuance of such refusal or obstruction.

SEC. 6. That payments under this act are only to be made to the beneficiaries or their legal representatives other than assignees, and shall not be subject to the claims of creditors.

SEC. 7. That the United States shall not exempt itself from liability under this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

SEC. 8. That all acts or parts of acts in conflict herewith or providing a different scale of compensation or otherwise regulating its payment are hereby repealed.

NOTE.—The duties prescribed herein to be performed by the Secretary of Commerce and Labor are now performed by the Secretary of Labor under the act of March 4, 1913 (37 Stat. 736).

37 STAT. 74, MARCH 11, 1912.

INJURED EMPLOYEES OF BUREAU OF MINES.

AN ACT To amend an act entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May 30, 1908.

Be it enacted, etc., That the provisions of the act approved May 30, 1908, entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment" (35 Stat. 556) shall, in addition to the classes of persons therein designated, be held to apply to any artisan, laborer, or other employee engaged in any hazardous work under the Bureau of Mines or the Forestry Service of the United States: Provided, That this act shall not be held to embrace any case arising prior to its passage.

36 STAT. 676, p. 699, JUNE 25, 1910.

PUBLIC BUILDINGS.

AN ACT To increase the limit of cost of certain public buildings, to authorize the enlargement, extension, remodeling, or improvement of certain public buildings, to authorize the erection and completion of public buildings, to authorize the purchase of sites for public buildings.

Be it enacted, etc., That to enable the Secretary of the Treasury of the United States to give effect to and execute the provisions of existing legislation authorizing the acquisition of land for sites or the enlargement thereof, and the erection, enlargement, extension, remodeling, or repair of public buildings in the several cities hereinafter enumerated. * * *

SEC. 32. That the Secretary of the Treasury be, and he is hereby, authorized and directed to prepare designs and estimates for a fireproof building of modern office-building type of architecture to be erected on square numbered 143, in the city of Washington, D. C., now owned by the United States, which building, including fireproof

vaults, heating and ventilating apparatus, elevators, and approaches, complete, to cost not exceeding $2,500,000, to be designed and constructed of sufficient area and capacity to occupy all of said square as a building site, and to afford, when completed, office accommodations for the entire organization at Washington of the office of the Geological Survey, office of Indian Affairs, office of the Reclamation Service, the General Land Office, and the Bureau of Mines; and such designs and estimates shall be approved by a board consisting of the Secretary of the Interior, the Secretary of the Treasury, and the Superintendent of the Capitol Buildings and Grounds: Provided, That no part of the amount heretofore mentioned as the limit of cost is authorized to be appropriated by this act except for the preparation of designs and estimates. And so much as may be necessary of the unexpended balance of the amount heretofore authorized for the acquisition of said site shall be available for the preparation of designs and estimates: Provided further, That the foregoing authorization shall be in addition to and independent of the authorizations and appropriations for personal services for the office of the Supervising Architect otherwise made.

36 STAT. 703, p. 742, JUNE 25, 1910.

APPROPRIATIONS.

Be it enacted, etc., * * *

For the general expenses of the Bureau of Mines, including the pay of the director and the necessary assistants, clerks, and other employees in the office at Washington, D. C., and in the field, and for every other expense requisite for and incident to the general work of the Bureau of Mines in Washington, D. C., and in the field, to be expended under the direction of the Secretary of the Interior, $54,000.

For dismantling and removing chemical laboratories, equipment, and office furniture from the office of the Geological Survey, to the office of the Bureau of Mines in Washington, D. C., and reinstalling and equipping the laboratories in the office of the Bureau of Mines with fixtures, including laboratory plumbing, sinks, hoods, coal sampling and crushing machinery, $14,700.

For rent of offices in the city of Washington, and for furnishing the same, together with such books, records, stationery and appliances as the Secretary of the Interior may provide, $10,000.

For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricty, the prevention of accidents and other inquiries and technologic investigations pertinent to the mining industry, $310,000.

For the analyzing and testing of the coals, lignites, ores, and other mineral fuel substances belonging to or for the use of the United States, heretofore under the supervision of the United States Geological Survey, $100,000.

For making public reports of the work, investigations and information obtained by said Bureau of Mines, with the recommendations of such bureau, $5,000: Provided, That no part of this sum

shall be expended for printing except at the Government Printing Office. (26 Stat. 110.)

For salaries of two mine inspectors, authorized by the act approved March 3, 1891, (26 Stat. 1094), for the protection of the lives of miners in the Territories, at $2,000 per annum each, $4,000; and said inspectors are hereby authorized to inspect coal and other mines in the District of Alaska, in which District the provisions of said act are hereby extended and made applicable;

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding $3 per day each while absent from their homes on duty, except in Alaska, when such allowance shall be at the rate of $5 per day, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, $4,500;

In all for the Bureau of Mines, $502,200.

A. BUREAU OF MINES—LEASES FOR MINE RESCUE WORK.

Under this appropriation the Bureau of Mines by direction of the Secretary of the Interior, is authorized to accept short term leases of land for the purpose of erecting temporary structures thereon for mine rescue work.

Mine Rescue Work, In re, 28 Op. Atty. Genl. 413, p. 417.

36 STAT. 1363, p. 1418, MARCH 3, 1911.

APPROPRIATIONS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1912.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1912, namely:

For the general expenses of the Bureau of Mines, including the pay of the director and the necessary assistants, clerks, and other employees in the office at Washington, D. C., and in the field, and for every other expense requisite for and incident to the general work of the Bureau of Mines in Washington, D. C., and in the field, to be expended under the direction of the Secretary of the Interior, $54,000.

For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents and other inquires and technologic investigations pertinent to the mining industry, $310,000.

For the analyzing and testing of the coals, lignites, ores and other mineral fuel substances belonging to or for the use of the United States, $135,000.

For tests or investigations authorized by the Secretary of the Interior, other than those performed for the Government of the United States, a reasonable fee covering actual necessary expenses shall be charged, according to a schedule submitted by the director and approved by the Secretary of the Interior, who shall prescribe the rules and regulations under which such tests or investigations shall be made and under which such fees shall be charged and collected.

All moneys received from such fees shall be paid into the Treasury to the credit of miscellaneous receipts;

For salaries of two mine inspectors, authorized by the act approved March 3, 1891, for the protection of the lives of miners in the Territories, $5,000; and said inspectors are hereby authorized to inspect coal and other mines in the District of Alaska, to which District the provisions of said act, except so much as requires six months' residence in a Territory prior to appointment, are hereby extended and made applicable;

For per diem, subject of such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding $3 per day each while absent from their homes on duty, except while in Alaska, when such allowance shall be at the rate of $5 per day, and for actual necessary traveling expenses of said inspectors, including necessary sleeping-car fares, $4,500;

For technical and scientific books and publications, $2,000;

In all for the Bureau of Mines, $475,500.

37 STAT. 417, p. 458, AUGUST 24, 1912.

APPROPRIATIONS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1913.

Be it enacted, etc., That the following sums be and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1913, namely:

* * * * * * *

For the general expenses of the Bureau of Mines, including the pay of the director and the necessary assistants, clerks, and other employees in the office at Washington, D. C., and in the field, and for every other expense requisite for and incident to the general work of the Bureau of Mines in Washington, D. C., and in the field, to be expended under the direction of the Secretary of the Interior, $66,100;

For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents and other inquiries and technologic investigations pertinent to the mining industry, $320,000;

For the analyzing and testing of the coals, lignites, ores, and other mineral fuel substances belonging to or for the use of the United States, including personal services in the Bureau of Mines at Washington, D. C., not in excess of the number and total compensation of those so employed during the fiscal year 1912, $135,000;

For inquiries and investigations into the mining and treatment of ores and other mineral substances, with special reference to safety and waste, $50,000: Provided, That no part thereof may be used for investigation in behalf of any private party, nor shall any part thereof be used for work authorized or required by law to be done by any other branch of the public service.

For one mine inspector for duty in Alaska, $3,000;

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding $5 per day when absent on official business from his designated headquarters, and for actual necessary traveling expenses of said inspector, including necessary sleeping-car fares, $3,500;

For technical and scientific books and publications and books of reference, $1,500;

For the purchase or lease of the necessary land, where and under such conditions as the Secretary of the Interior may direct, for the headquarters of five mine-rescue cars and for the construction of the necessary railway sidings on the same, $4,000: Provided, That the Secretary of the Interior is hereby authorized to accept any suitable land or lands that may be donated for said purpose.

In all, for the Bureau of Mines, $583,100.

37 STAT. 595, p. 609, AUGUST 26, 1912.

APPROPRIATIONS.

AN ACT Making appropriations to supply deficiences in appropriations for the fiscal year 1912 and for prior years.

Be it enacted, etc., That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in appropriations for the fiscal year 1912 and for prior years, and for other purposes, namely:

* * * * * * *

The accounting officers of the Treasury Department are authorized and directed to credit in the accounts of George W. Evans, chief disbursing clerk, Department of the Interior, the payments made by him during the quarters ended December 31, 1911, and March 31, 1912, amounting to $254.38 and fully set forth in House Document No. 748 of this session.

For investigating mine accidents, $82.10.

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37 STAT. 868, p. 886, MARCH 4, 1913.

PITTSBURGH STATION.

AN ACT To increase the limit of cost of certain public buildings, to authorize the enlargement, extension, remodeling, or improvements of certain public buildings, to authorize the erection and completion of public buildings, to authorize the purchase of sites for public buildings.

Be it enacted, etc., That to enable the Secretary of the Treasury of the United States to give effect to and execute the provisions of existing legislation authorizing the acquisition of land for sites or the enlargement thereof, and the erection, enlargement, extension, remodeling, or repair of public buildings in the several cities hereinafter enumerated, the limit of cost heretofore fixed by Congress therefor be, and the same is hereby, increased, respectively, as follows; and the Secretary of the Treasury is hereby authorized to enter into contracts for the completion of each of said buildings within its respective limit of cost, including site:

* * * * * * *

SEC. 26. That the Secretary of the Treasury be, and he is hereby, authorized and directed to enter into a contract or contracts for the

erection and completion of fireproof laboratories and other buildings suitable and necessary for the investigations of the Bureau of Mines, on a site hereinafter provided, in the city of Pittsburgh, Pa., within the total limit of cost hereinafter fixed.

That the said laboratories and other buildings shall be constructed under the direction of and in accordance with plans and estimates to be approved by a board consisting of the Director of the Bureau of Mines, the Chief of Engineers of the Army, and the Supervising Architect of the Treasury, and shall be so constructed as to cost, complete, with the necessary railroad sidings, approaches, plumbing, lighting, heating, ventilating and hoisting apparatus, and other necessary appurtenances, not to exceed the sum of $500,000, of which amount the sum of $250,000 is hereby authorized and shall be immediately available for the preparation of plans for said laboratories and other buildings and for carrying forward construction work. And the Secretary of the Treasury is hereby authorized to employ, without regard to civil-service laws, rules, or regulations, and to pay for at customary rates of compensation, out of this authorization, such technical and engineering services as may be recommended by the above board, to serve exclusively in the Office of the Supervising Architect of the Treasury Department to aid in the preparation of plans and specifications for and to supervise the construction of the work herein provided for: Provided, That the foregoing authorization for the employment of technical and engineering services shall be in addition to and independent of the authorizations and appropriations for personal services for the Office of the Supervising Architect otherwise made.

That the Secretary of War be, and he is hereby, authorized to transfer to the city of Pittsburgh, Pa., or to the board of public education of the said city of Pittsburgh, for public use, that part of the United States arsenal grounds in the city of Pittsburgh lying between Thirty-ninth and Fortieth Streets and between Butler Street and the tract of land transferred by the Secretary of War to the custody and control of the Treasury Department for a marine-hospital site by an instrument dated June 1, 1904, under authority of the sundry civil act of March 3, 1903, the land to be transferred to the said city of Pittsburgh being more particularly described as follows: Beginning at the northwest corner of the said tract of land transferred to the custody and control of the Treasury Department, and running thence along Fortieth Street in a northwesterly direction to the intersection of said street and Butler Street, 1,117½ feet, more or less; thence along Butler Street in a southwesterly direction to the intersection of said street and Thirty-ninth Street, 523 feet, more or less; thence along Thirty-ninth Street in a southeasterly direction to southwest corner of the said tract of land transferred to the custody and control of the Treasury Department, 1,100½ feet, more or less; and thence along the westerly boundary of said tract of land in a northeasterly direction to the place of beginning, 523 feet, more or less; and containing 13¼ acres, more or less, on the transfer by the board of public education of the city of Pittsburgh, or by the city of Pittsburgh, to the United States, for the use of the Bureau of Mines, under the Department of the Interior, as a site for the erection of the laboratories and other buildings hereinbefore provided for, of the tract

of land in the said city of Pittsburgh, known as the Magee High School site, and lying on Forbes Street and the Baltimore & Ohio Railroad, and more particularly described as follows: Beginning in the center of Boundary Street at its junction with Forbes Street and running north 87 degrees 36 minutes 45 seconds east parallel to Forbes Street for a distance of 536.2 feet, more or less, to a stone monument; thence running south 2 degrees 23 minutes 15 seconds east for a distance of 150 feet, more or less, to a stone monument; thence north 87 degrees 36 minutes 45 seconds east for a distance of 115 feet, more or less, to a stone monument; thence north 2 degrees 23 minutes 15 seconds west for a distance of 58.89 feet, more or less, to a stone monument; thence south 52 degrees 26 minutes 15 seconds east for a distance of 20.8 feet, more or less, to a pin; thence south 50 degrees 41 minutes 15 seconds east for a distance of 413.8 feet, more or less, to a pin; thence south 15 degrees 28 minutes 45 seconds west for a distance of 326.7 feet, more or less, to a pin; thence north 76 degrees 45 minutes west for a distance of 1,144.75 feet, more or less, to the center of Boundary Street; and thence along the center of Boundary Street north 28 degrees 15 minutes east for a distance of 444.38 feet, more or less, to the starting point, and containing an area of 11½ acres, more or less: Provided, That before the above-described transfer by the Secretary of War to the city of Pittsburgh shall become effective, and as an express further consideration for said transfer, and for the surrender by the United States of a perpetual water supply now obtained from a reservoir located on the lands so to be transferred, the city of Pittsburgh, through its proper officers, shall covenant and agree, at its own expense, and within a reasonable time, to tap, within that part of the Pittsburgh supply depot and reservation between Butler Street and the Allegheny River retained by the United States, the 42-inch water main belonging to the said city which now crosses the said reservation under a revocable license, and thereafter to furnish, in perpetuity, free of charge to the United States, all the water needed of good quality for said purposes, for all purposes upon the said reservation, and shall also agree to keep its own water main, pipes, hydrants, and other necessary appurtenances now located or hereafter to be located upon the same, in good condition and repair at its own expense. In case of failure of the city of Pittsburgh to do any and all things necessary to proper fulfillment of this provision, the reservoir, pipe lines, and so much of the land adjacent thereto on the part of the reservation which is to be transferred to the said city as may be needed for rights of way shall revert to the United States.

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38 STAT. 251, DECEMBER 22, 1913 (PUBLIC—NO. 42, 63D CONGRESS).

PITTSBURGH STATION—AMENDMENTS.

AN ACT Amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the enlargement, extension, remodeling, or improvement of certain public buildings, to authorize the erection and completion of public buildings, to authorize the purchase of sites for public buildings, and for other purposes," approved March 4, 1913.

Be it enacted, etc., That section 26 of the act approved March 4, 1913, which authorizes the Secretary of the Treasury to enter into

a contract or contracts for the erection of fireproof laboratories for the Bureau of Mines in the city of Pittsburgh, Pennsylvania, and so forth, is hereby amended so as to authorize the Secretary of the Treasury, in his discretion, to accept and expend, in addition to the limit of cost therein fixed, such funds as may be received by contribution from the State of Pennsylvania, or from other sources, for the purpose of enlarging, by purchase, condemnation, or otherwise, and improving the site authorized to be acquired for said Bureau of Mines, or for other work contemplated by said legislation: Provided, That the acceptance of such contributions and the improvements made therewith shall involve the United States in no expenditure in excess of the limit of cost heretofore fixed.

38 STAT. 4, p. 48, JUNE 23, 1913.

APPROPRIATIONS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1914.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1914, namely:

* * * * * * *

For the general expenses of the Bureau of Mines, including the pay of the director and the necessary assistants, clerks, and other employees in the office at Washington, D. C., and in the field, and for every other expense requisite for and incident to the general work of the Bureau of Mines in Washington, D. C., and in the field, to be expended under the direction of the Secretary of the Interior, $70,000;

For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to the mining industry, $347,000;

For the analyzing and testing of the coals, lignites, ores, and other mineral fuel substances belonging to or for the use of the United States, including personal services in the Bureau of Mines at Washington, D. C., not in excess of the number and total compensation of those so employed during the fiscal year 1912, $135,000;

For inquiries and investigations into the mining and treatment of ores and other mineral substances, with special reference to safety and waste, $100,000: Provided, That no part thereof may be used for investigation in behalf of any private party, nor shall any part thereof be used for work authorized or required by law to be done by any other branch of the public service;

For one mine inspector for duty in Alaska, $3,000;

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding $5 per day when absent on official business from his designated headquarters, and for actual necessary traveling expenses of said inspector, $3,500;

For technical and scientific books and publications and books of reference, including payment in advance for subscriptions to publications, $1,500;

For the purchase or lease of the necessary land, where and under such conditions as the Secretary of the Interior may direct, for the headquarters of five mine-rescue cars and for the construction of the necessary railway sidings on the same, $2,000: Provided, That the Secretary of the Interior is hereby authorized to accept any suitable land or lands that may be donated for said purpose;

In all, for the Bureau of Mines, $662,000.

* * * * * * *

38 STAT. 609, p. 646.—AUGUST 1, 1914 (PUBLIC—NO. 161—63D CONGRESS).

APPROPRIATIONS—BUREAU OF MINES.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1915, and for other purposes.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1915.

* * * * * * *

For general expenses, including pay of the director and necessary assistants, clerks, and other employees in the office at Washington, District of Columbia, and in the field, and every other expense requisite for and incident to the general work of the bureau in Washington, District of Columbia, and in the field, to be expended under the direction of the Secretary of the Interior, $70,000;

For investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to the mining industry, $347,000;

For purchase of mine-rescue, first-aid, and fire-fighting equipment and supplies for use in the operation of mine-rescue cars and stations, $30,000;

For purchase of steam and electric equipment for supplying light and power to the testing plant of the Bureau of Mines at Pittsburgh, Pennsylvania, $10,000;

For investigation of mineral fuels and unfinished mineral products belonging to or for the use of the United States, with a view to their most efficient mining, preparation, treatment, and use, including personal services in the bureau at Washington, District of Columbia, not in excess of the number and total compensation of those so employed during the fiscal year 1913, $135,000;

For inquiries and scientific and technologic investigations concerning the mining, preparation, treatment, and utilization of ores and other mineral substances, with a view to improving health conditions and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; to inquire into

the economic conditions affecting these industries: Provided, That no part thereof may be used for investigation in behalf of any private party, nor shall any part thereof be used for work authorized or required by law to be done by any other branch of the public service, $100,000.

Not exceeding 20 per centum of the foregoing sum and not exceeding 10 per centum of the sum for investigation as to causes of mine explosions may be used during the fiscal year 1915 for personal services in the District of Columbia; and for the fiscal year 1916, and annually thereafter estimates shall be submitted specifically for all personal services required permanently and entirely in the Bureau of Mines at Washington, District of Columbia, and previously paid from lump sum or general appropriations.

For inquiries and investigations concerning the mining, preparation, treatment, and utilization of petroleum and natural gas, with a view to economic development, and conserving resources through the prevention of waste; to inquire into the economic conditions affecting the industry, $25,000;

For one mine inspector for duty in Alaska, $3,000;

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding $5 per day when absent on official business from his designated headquarters, and for actual necessary traveling expenses of said inspector, $2,500;

For technical and scientific books and publications and books of reference, including payment in advance for subscriptions to publications, $1,500;

For purchase or lease of the neecssary land, where and under such conditions as the Secretary of the Interior may direct, for the headquarters of five mine rescue cars and for the construction of the necessary railway sidings on the same, $1,000: *Provided*, That the Secretary of the Interior is authorized to accept any suitable land or lands that may be donated for said purpose;

In all, for the Bureau of Mines, $725,000.

Persons employed during the fiscal year nineteen hundred and fifteen in field work, outside of the District of Columbia, under the Bureau of Mines, may be detailed temporarily for service at Washington, District of Columbia, for purposes only of consultation or in connection with the preparation of results of their field work; all persons so detailed shall be paid in addition to their regular compensation only their actual traveling expenses in going to and returning therefrom; and all details made hereunder, and the purposes of each, during the fiscal year shall be reported, in the annual estimates of appropriations, to the Sixty-fourth Congress at its first regular session.

* * * * * * *

Washington, District of Columbia, Interior Department Offices: Not exceeding $40,000 or the unexpended balance of the appropriation for the acquisition of square numbered 143 in Washington, District of Columbia, is reappropriated and made available toward the purposes and within the limit named in section 9 of the public buildings act of March 4, 1913, providing for a building for the Geological Survey and other offices of the Department of the Interior.

38 STAT. 510, JULY 17, 1914 (PUBLIC—NO. 120—63D CONGRESS).

MINE-RESCUE STATION—McALESTER, OKLA.

AN ACT For the purchase of a building and lot as a mine-rescue station at McAlester, Okla.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed to purchase, for and on behalf of the United States, the following-described real estate in the city of McAlester, county of Pittsburg, State of Oklahoma, to wit, the north 50 feet of lot numbered 2, in block numbered 487, in the original town site of South McAlester, the dimensions of said lot being 50 feet by 165 feet, with 50 feet front on South Third Street, in said city of McAlester, together with the two-story brick building and all other improvements thereon, for the use of the Bureau of Mines for a mine-rescue station and for such other purposes as the Bureau of Mines may from time to time desire to use the same, at and for the sum of $5,500, which said sum is hereby appropriated for such purpose out of any money in the Treasury not otherwise appropriated.

CENSUS.

36 STAT. 1, p. 4, JULY 2, 1909.

MINERAL SCHEDULES.

AN ACT To provide for the Thirteenth and subsequent decennial censuses.

Be it enacted, etc., That a census of the population, agriculture, manufactures, and mines and quarries of the United States shall be taken by the Director of the Census in the year 1910, and every 10 years therafter.

* * * * * * *

SEC. 8. * * * The schedules of inquiries relating to manufactures and to mines and quarries shall include the name and location of each establishment; character of organization, whether individual, cooperative, or other form; character of business or kind of goods manufactured; amount of capital actually invested; number of proprietors, firm members, copartners, stockholders, and officers and the amount of their salaries; number of employees and the amount of their wages; quantity and cost of materials used in manufactures; amount of miscellaneous expenses; quantity and value of products; time in operation during the census year; character and quantity of power used, and character and number of machines employed.

The census of manufactures and of mines and quarries shall relate to the year ending December 31 next preceding the enumeration of population and shall be confined to mines and quarries and manufacturing establishments which were in active operation during all or a portion of that year. (Amended 36 Stat. 227.)

* * * * * * *

SEC. 24. And it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any manufacturing establishment, mine, quarry, or other establishment of productive industry, whether conducted as a corporation, firm, limited-liability company, or by private individuals, when requested by the Director of the Census or by any supervisor, enumerator, special agent, or other employee of the Census Office acting under the instructions of the said director, to answer completely and correctly to the best of his knowledge all questions on any census schedule applying to such establishment. (Remainder of section imposes penalty.)

36 STAT. 227, FEBRUARY 25, 1910.

CENSUS REPORTS—AMENDMENT.

AN ACT To amend section 8 of an act to provide for the Thirteenth and subsequent decennial censuses, approved July 2, 1909.

* * * * * * *

SEC. 8. * * * The schedules of inquiries relating to manufactures and to mines and quarries shall include the name and location of

each establishment; character of organization, whether individual, cooperative, or other form; character of business or kind of goods manufactured; amount of capital actually invested; number of proprietors, firm members, copartners, stockholders, and officers, and the amount of their salaries; number of employees and the amount of their wages; quantity and cost of materials used in manufactures; amount of miscellaneous expenses; quantity and value of products; time in operation during the census year; character and quantity of power used, and character and number of machines employed. * * * The census of manufactures and of mines and quarries shall relate to the year ending December 31 next preceding the enumeration of population and shall be confined to mines and quarries and manufacturing establishments which were in active operation during all or a portion of that year.

* * * * * * *

DEBRIS DEPOSITS.

24 STAT. 316, p. 329, AUGUST 5, 1886.

MINES AND STAMP WORKS.

AN ACT Making an appropriation for the construction, repair, and preservation of certain public works on rivers and harbors, etc.

Be it enacted, etc., * * *

SEC. 2. That in places where harbor lines have not been established, and where deposits of débris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him.

* * * * * * *

25 STAT. 496, OCTOBER 1, 1888.

DÉBRIS DEPOSITS COMMISSION—CALIFORNIA.

AN ACT For the investigation of the mining-débris question in California.

Be it enacted, etc., That the Secretary of War is hereby authorized and directed to detail three officers from the Engineers Corps of the United States Army as a commission for the purpose of making a thorough examination and investigation of the mining-débris question in the State of California, for the purpose of ascertaining whether some plan can be devised whereby the present conflict between the mining and farming sections may be adjusted and the mining industry rehabilitated; and for a complete examination of the injured navigable river channels, their tributaries and lands adjacent thereto, with a view to the improvement and rectification of said rivers. And that the sum of $10,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this act, said sum to be expended at the discretion of the Secretary of War; the said commission to report as early as practicable to the Secretary of War the result of their investigation, and the Secretary of War shall make report thereof to Congress.

27 STAT. 393, FEBRUARY 25, 1892.

DÉBRIS DEPOSITS—CALIFORNIA.

JOINT RESOLUTION Investigating mining débris in California.

Resolved, etc., That the Secretary of War be, and he is hereby, requested to submit for the consideration of Congress what amounts can be profitably expended during the coming year to carry out the

recommendations made by the commission of engineers, United States Army, appointed under the provisions of an act of Congress approved October 1, 1888, entitled "An act to investigate mining débris in California," for "restriction works, dams, and wingdams, to restrain the mining débris where now situated, and prevent its lodgment in the rivers of California, to the injury of navigation and commerce."

27 STAT. 507, MARCH 1, 1893.

CALIFORNIA DÉBRIS COMMISSION—HYDRAULIC MINING.

AN ACT To create the California Débris Commission and regulate hydraulic mining in the State of California.

Be it enacted, etc., That a commission is hereby created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority, and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War.

SEC. 2. That said commission shall organize within 30 days after its appointment by the selection of such officers as may be required in the performance of its duties, the same to be selected from the members thereof. The members of said commission shall receive no greater compensation than is now allowed by law to each, respectively, as an officer of said corps of engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the methods of procedure under the provisions of this act.

SEC. 3. That the jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin River systems in the State of California. Hydraulic mining, as defined in section 8 hereof, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of this act is hereby prohibited and declared unlawful.

SEC. 4. That it shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in 1860, and permitting mining by the hydraulic process, as the term is understood in said State, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the land adjacent thereto.

SEC. 5. That it shall further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of débris or water or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers by preventing deposits therein of débris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the débris and material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid.

SEC. 6. That the said commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise.

SEC. 7. That said commission shall submit to the Chief of Engineers, for the information of the Secretary of War, on or before the 15th day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in this act, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof.

SEC. 8. That for the purposes of this act "hydraulic mining" and "mining by the hydraulic process," are hereby declared to have the meaning and application given to said terms in said State.

SEC. 9. That the individual proprietor or proprietors, or in case of a corporation its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section 3 hereof, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission.

SEC. 10. That said petition shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the débris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting

the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State: Provided, That they shall not interfere with the navigability of the aforesaid rivers.

SEC. 11. That the owners of several mining claims situated so as to require a common dumping ground or dam or other restraining works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section 9 hereof; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling reservoirs, which sites are located below the mine of an applicant not entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for herein.

SEC. 12. A notice specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted shall be published by said commission in some newspaper or newspapers of general circulation in the community interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least 10 days; if in a weekly paper, in at least three issues of the same. Pending publication thereof said commission, or a committee thereof, shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans, and maps in support of their respective claims. Further hearing, upon notice to all parties of record, may be granted by the commission when necessary.

SEC. 13. That in case the majority of the members of said commission, within 30 days after the time so fixed, concur in a decision in favor of the petitioner or petitioners, the said commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if facilities therefor can be found, shall be built, and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and will prevent injury to the said navigable rivers, and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: Provided, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines. (Amended, 34 Stat. 1001, p. 944.)

SEC. 14. That such petitioner or petitioners must within a reasonable time present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said commission; and thereupon work may immediately commence thereon under the supervision of said commission or representative thereof attached thereto from said corps of engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be

granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act.

SEC. 15. That no permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such permission, have been completed and until the impounding dams or other restraining works or settling reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same: Provided, however, That if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations.

SEC. 16. That in case the joint petition referred to in section 11 hereof is granted, the commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding dams or other restraining works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said commission, the commission shall fix such amount as may be reasonable for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding dams or other restraining works in proportion to the amount respectively paid by each party owning same. The expense of maintaining and protecting such joint dam or works shall be divided among mine owners using the same in such proportions as the commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine owners near or below the mine or mines before reaching the main tributaries of said navigable waters.

SEC. 17. That at no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected.

SEC. 18. That the said commission may at any time, when the condition of the navigable rivers or when the capacities of all the impounding and settling facilities erected by the mine owners or such as may be provided by government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce amount thereof to meet the capacities of the facilities then in use, or actually required in order to protect the navigable rivers from damage, may revoke same until the further notice of the commission.

SEC. 19. That an intentional violation on the part of a mine owner or owners, company, or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section 13, or such modifications thereof as may have been made by said commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said commission upon such owner or owners, company, or corporation, or agent in charge,

work shall immediately cease. Said commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company, or corporation, or agent thereof, to comply therewith, or in the event of any person or persons, company, or corporation working by said process in said territory contrary to law.

SEC. 20. That said commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provisions of this act. A report of such examination shall be placed on file.

SEC. 21. That the said commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush, or material thereon or therein, for any of the purposes of this act; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the Commissioner of the General Land Office by said commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States.

SEC. 22. That any person or persons who willfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy any dam or other work erected under the provisions of this act for restraining, impounding, or settling purposes, or for use in connection therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of $5,000 or be imprisoned not to exceed five years, or by both such fine and imprisonment, in the discretion of the court. And any person or persons, company, or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That this section shall take effect on the 1st day of May, 1893.

SEC. 23. That upon the construction by the said commission of dams or other works for the detention of débris from hydraulic mines and the issuing of the order provided for by this act to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual, company, or corporation operating thereunder working any mine or mines by hydraulic process, the débris from which flows into or is in whole or in part restrained by such dams or other works erected by said commission, shall pay a tax of 3 per centum on the gross proceeds of his, their, or its mine so worked; which tax of 3 per centum shall be ascertained and paid in accordance with regulations to be adopted by the Secretary of the Treasury, and the Treasurer of the United States is hereby authorized to receive the same. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "débris fund," and shall be expended by said commission under the supervision of the Chief of Engineers and direction of the Secretary of War, in addition

to the appropriations made by law in the construction and maintenance of such restraining works and settling reservoirs as may be proper and necessary: Provided, that said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions hereof, such money advances as may be offered to aid in the construction of such impounding dams or other restraining works, or settling reservoirs, or sites therefor, as may be deemed necessary by said commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said débris fund; And provided further, That in no event shall the Government of the United States be liable to refund same except as directed by this section.

SEC. 24. That for the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the State of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining débris or other minerals within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said commission is empowered to consult thereon with a commission of engineers of said State, if authorized by said Sate for said purpose, the result of such conference to be reported to the Chief of Engineers of the United States Army, and if by him approved shall be followed by said commission.

SEC. 25. That said commission, in order that such material as is now or may hereafter be lodged in the tributaries of the Sacramento and San Joaquin River systems resulting from mining operations, natural erosion, or other causes shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or sufficient money is deposited for that purpose in said débris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or at any place adjacent to the same, which in the judgment of said commission, will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling reservoirs, with such canals, locks, or other works adapted and required to complete same. The recommendations contained in Executive Document No. 267, Fifty-first Congress, second session, and Executive Document No. 98, Forty-seventh Congress, first session, as far as they refer to impounding dams, or other restraining works, are hereby adopted, and the same are directed to be made the basis of operations. The sum of $15,000 is hereby appropriated, from moneys in the Treasury not otherwise appropriated, to be immediately available to defray the expenses of said commission.

A. MINING DÉBRIS ACT.
B. STATE COURTS, p. 943.

A. MINING DÉBRIS ACT.

1. PURPOSE OF ACT.
2. POWER OF CONGRESS OVER MINING OPERATIONS.
3. JURISDICTION OF COMMISSION.
4. DUTY OF COMMISSION.
5. HYDRAULIC MINING.
   a. PROHIBITED WHEN INJURIOUS TO STREAMS.
   b. PERMIT FROM COMMISSION NECESSARY.
   c. CONDITIONS ON WHICH PERMITS GRANTED—PROCEDURE.

1. PURPOSE OF ACT.

The purpose of this statute is to provide a means by which hydraulic mining can be carried on in the territory named without directly or indirectly injuring the navigability of the river systems mentioned.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 250.
See North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664.

While it was the purpose of this act to prevent injuries if possible to the navigable rivers and to lower landowners, yet the act was not intended to exonerate a miner from liability, or in any respect to limit or restrict the powers of the State courts, but protected private property from threatened injury and to redress inflicted wrongs thereto caused by the operation of a hydraulic mine, though carried on under a permit and in strict compliance with the plans and directions of the commission.

County of Sutter v. Nicols, 152 Cal. 688, p. 696.

It is the intent and meaning of this statute to prohibit and make unlawful any and all hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems which directly or indirectly injures the navigability of such system and to permit it in all cases where the work can be done without such injury to such river systems or other lands adjacent thereto.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 251.

This act is intended to promote the navigability of the rivers named by providing for the regulation, restriction, and supervision of hydraulic mining upon headwaters or other rivers, but it does not purport to make the miners the agents of the United States to preserve the rivers below any other present state or restore them to a former condition, but is intended to so control and restrict the operation of such mines as to prevent the further clogging of these streams by mining débris and at the same time to devise plans whereby hydraulic mining can be carried on without injury to other persons.

County of Sutter v. Nicols, 152 Cal. 688, p. 695.

As to the circumstances and conditions leading to the enactment and on the interpretation of this statute, see:

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 248.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 672.
Hobbs v. Amador, etc., Canal Co., 66 Cal. 161.
Salstrom v. Orleans Bar Gold Min. Co., 153 Cal. 551.
Good v. West Min. Co., 154 Mo. App. 591; 136 S. W. 241.
Nelson v. O'Neal, 1 Mont. 284.
Fitzpatrick v. Montgomery, 20 Mont. 181; 51 Pac. 416.
York v. Davidson, 39 Oreg. 81; 65 Pac. 819.
Carson v. Hayes, 39 Oreg. 97; 65 Pac. 814.

2. POWER OF CONGRESS OVER MINING OPERATIONS.

Congress has the power to put a stop to the workings of all mines that contribute in any degree to obstruct the navigable waters either between the States or connecting with the ocean and to prescribe the conditions upon which any work so contributing might be prosecuted.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 252.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 674.

Congress intended to make the provisions of this act mandatory.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, pp. 672, 677.

3. JURISDICTION OF COMMISSION.

The jurisdiction of the California Débris Commission extends to all hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems in California.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 249.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 674.

The jurisdiction of the California Débris Commission, so far as it affects hydraulic mining, extends to the territory drained by the Sacramento and San Joaquin Rivers, and any such mining directly or indirectly injuring the navigability of these river systems is prohibited unless authorized by the commission.

County of Sutter v. Nicols, 152 Cal. 688, p. 692.

4. DUTY OF COMMISSION.

It is made the duty of the commission to mature and adopt such plan or plans as will improve the navigability of the rivers comprising the system named, with a view of making the same effective as against danger from débris resulting from mining operations.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 250.

It is made the duty of the commission to determine the utility and practicability of storage sites in the tributaries of the rivers mentioned and other places for the storage of débris, or settling reservoirs, and by other methods to prevent deposits of débris in such rivers resulting from mining operations.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 250.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

The commission is authorized to adopt plans to prevent damage from débris resulting from mining operations, with a view of restoring the navigability of the Sacramento and San Joaquin Rivers to the condition existing in 1860.

County of Sutter v. Nicols, 152 Cal. 688, p. 692.

5. HYDRAULIC MINING.

a. PROHIBITED WHEN INJURIOUS TO STREAMS.

Hydraulic mining is unlawful and is prohibited when it directly or indirectly injures the navigability of the river systems mentioned in this section.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 249.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 672.

The statute proceeds upon the theory that injury must necessarily result from hydraulic mining unless conducted in the manner permitted by the statute.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 677.

The act prohibits all hydraulic mining unless the provisions of the act are first complied with.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 677.

Hydraulic mining under this statute and mining by the hydraulic process as provided for in this statute is intended to have the meaning and application given to these terms in the State of California.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 249.

The plain meaning of sections 4 and 5 is that mine owners within the territory drained by the rivers mentioned shall not work their mines by the hydraulic process unless they file with the commission a certain described petition.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 252.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

Neither Congress nor the Legislature of California has authorized the use of the navigable rivers in the State of California for the flow and deposit of mining débris to the extent that such rivers are thereby obstructed, navigation impeded or prevented, and the lands adjacent covered and injured by such mining débris.

Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. 753, p. 770.

No statute of the State of California in express terms authorizes the miners to fill up the channels of the waters of the State with mining débris to such an extent as to injure navigation, or to bury and destroy the lands of riparian proprietors; and such right can not be inferred from legislation recognizing and encouraging mining as in itself a lawful pursuit.

Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. 753, p. 774.

The prohibitory effect of sections 4 and 5 is confirmed by the provisions of section 17.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 252.

b. PERMIT FROM COMMISSION NECESSARY.

Under this statute mine owners engaged in hydraulic mining in the district named have no right to use the streams without the permission of the commissioners.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 677.

No permit can be issued until the provisions of the act have been complied with, and hydraulic mining is prohibited unless and until such permit is issued.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

This section means that the things prescribed shall be done before any permit is issued.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

Sections 9 and 10 prescribe methods by which the owners of mineral lands may operate the same by hydraulic mining and provide the manner and method by which the débris resulting from the working of such land shall be restrained and what amount shall be produced therefrom.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 250.

c. CONDITIONS ON WHICH PERMITS GRANTED—PROCEDURE.

The commission may grant permission to owners of mineral lands to carry on mining operations subject to the conditions of the statute and the rules and regulations of the commission.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 251.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

Persons desiring to operate by hydraulic process must present their verified petition as required by this section and must otherwise comply with the statute, and must construct the prescribed works under the supervision of the commission before permission is granted to operate their mine by the hydraulic method.

County of Sutter v. Nicols, 152 Cal. 688, p. 692.

Mine owners shall not begin operations under permission of the commission until impounding dams, restraining works, or settling reservoirs are in such condition as the commission may deem safe.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 251.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 673.

The provisions directing notice to be given and authorizing a hearing were intended to conclude and estop the lower landowners with respect to subsequent injuries that might be inflicted, but were only designed to enable the commission to obtain all aid which it could derive from the suggestions of all persons whose property was believed to be in danger, in order that the commission could better advise as to the means and plans necessary to prevent such injury.

County of Sutter v. Nicols, 152 Cal. 688, p. 696.

No more mining débris shall be permitted to be washed from any hydraulic mine than can be cared for within the restraining works erected.

United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, p. 251.

B. STATE COURTS.

1. JURISDICTION TO PREVENT INJURY FROM HYDRAULIC MINING.
2. INJURIES FROM HYDRAULIC MINING—INJUNCTION.

1. JURISDICTION TO PREVENT INJURY FROM HYDRAULIC MINING.

The State courts have jurisdiction and power to prevent actual or threatened injury caused by hydraulic mine operations, though such operations are carried on strictly in accordance with the permission given by the débris commission.

County of Sutter v. Nicols, 152 Cal. 688, p. 691.

The mining débris commission authorized by this act is not a judicial tribunal and its findings and the permission granted by it to operate a hydraulic mine are not conclusive upon the State courts, and a person whose property is in fact injured may have relief in the State courts, though the mining is carried on pursuant to permission granted by the commission and in strict compliance with its directions and supervision.

County of Sutter v. Nicols, 152 Cal. 688, p. 693.

2. INJURIES FROM HYDRAULIC MINING—INJUNCTION.

A mining company may be enjoined from working a placer mine by the use of hydraulic pressure thereby washing out the gravel, sand, and débris, and causing the same to accumulate in a natural watercourse to the extent that such watercourse is obstructed and such gravel, sand, and débris are thereby deposited upon the lands of the riparian owners to their permanent injury.

Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. 753.
Hardt v. Liberty Hill Consol., Min., etc., Co., 27 Fed. 788.
United Sates v. North Bloomfield Gravel Min. Co., 53 Fed. 625.
See United States v. North Bloomfield Gravel Min. Co., 81 Fed. 243, pp. 248, 252.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, pp. 671, 676.
McCann v. Wallace, 117 Fed. 936.
People v. Gold Run, etc., Min. Co., 66 Cal. 138.

The fact that parties violating the provisions of this act subject themselves to penalties does not prevent the issuance of an injunction.

North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 677.

A mining corporation enjoined from operating its mine by the hydraulic process because of obstruction to navigation and injury to adjoining proprietors will not on mere intimation be enjoined a second time where, on permission from the court, it has erected proper impounding reservoirs by means of which it impounded upon its own land and within its own mines all material likely to obstruct navigation or injure adjoining landowners.

United States v. North Bloomfield Gravel Min. Co., 53 Fed. 625, p. 629.
North Bloomfield Gravel Min. Co. v. United States, 88 Fed. 664, p. 671.
See Woodruff v. North Bloomfield Gravel Min. Co., 45 Fed. 129.

34 STAT. 1001, FEBRUARY 27, 1907.

California Débris Commission—AMENDMENT.

AN ACT To amend section 13 of an act of March 1, 1893, entitled "An act to create the California Débris Commission, etc."

Be it enacted, etc., That section 13 of an act of March 1, 1893, entitled "An act to create the California Débris Commission and regulate mining in the State of California," is hereby amended so as to read as follows:

"SEC. 13. That in case a majority of the members of said commission, within 30 days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: Provided, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines: And provided further, That where it shall appear to said commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling reservoirs: And provided also, That where such an order is made a license to mine, no taxes provided for herein on the gross proceeds of such mining operations shall be collected."

30 STAT. 1121, p. 1152, MARCH 3, 1899.

DEPOSITING REFUSE IN NAVIGABLE WATERS.

AN ACT Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, etc.

Be it enacted, etc., That the following sums of money be, and are hereby, appropriated, to be paid out of any money in the Treasury

not otherwise appropriated, to be immediately available, and to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers, for the construction, completion, repair, and preservation of the public works hereinafter named:

* * * * * * *

SEC. 13. That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: Provided, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: And provided further, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

DESERT LANDS.

19 STAT. 377, Chap. 107, MARCH 3, 1877.

WATER RIGHTS.

AN ACT To provide for the sale of desert lands in certain States and Territories.

Be it enacted, etc., That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of 25 cents per acre, to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding 1 section, by conducting water upon same, within the period of three years thereafter: Provided, however, That the right to the use of water by the person so conducting the same, on or to any tract of desert land of 640 acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of $1 per acre for a tract of land not exceeding 640 acres to any one person, a patent for the same shall be issued to him. Provided, That no person shall be permitted to enter more than one tract of land and not to exceed 640 acres which shall be in compact form.

SEC. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

SEC. 3. That this act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office.

A. SURFACE WATER—APPROPRIATION FOR MINING, ETC.

See sec. 2339, p. 609.

This act by declaring that surface water on the public domain shall remain and be held free for the appropriation and use of the public for mining and other purposes subject to existing rights does not limit the right of appropriation by the owners of land upon which a beneficial use of the water is to be made, nor prevent a local legislature from empowering a water company to become an intermediary for furnishing water for such purposes to the lands of third persons not bordering upon the stream.

Gutierres v. Albuquerque Land, etc., Co., 188 U. S. 545, p. 555.

The water which may be appropriated under this statute is limited to the "surplus" water of a stream over and above any water already appropriated and which shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights.

Gutierres v. Albuquerque Land, etc., Co., 188 U. S. 545, pp. 553, 555.

26 STAT. 1095, p. 1096, MARCH 3, 1891.

AMENDMENT.

AN ACT To repeal timber-culture laws, and for other purposes.

Be it enacted, etc., * * *.

SEC. 2. That an act to provide for the sale of desert lands in certain States and Territories, approved March 3, 1877 (19 Stat. 377, chap. 107), is hereby amended by adding thereto the following sections:

SEC. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land, which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections, or fractional parts of sections, of desert lands may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

SEC. 5. That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least $3 per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid the party so entering shall expend not less than $1 per acre for the purpose, aforesaid; and he shall in like manner expend the sum of $1 per acre during the second and also during the third year thereafter, until the full sum of $3 per acre is so expended. Said party shall file during each year with the register proof, by the affidavits of two or more credible witnesses, that the full sum of $1 per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid the lands shall

revert to the United States, and the 25 cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of $3 per acre: Provided, That proof be further required of the cultivation of one-eighth of the land.

SEC. 6. That this act shall not affect any valid rights heretofore accrued under said act of March 3, 1877 (19 Stat. 377), but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of $1 per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than 320 acres of such arid or desert lands but this section shall not apply to entries made or initiated prior to the approval of this act. Provided, however, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands, and moneys paid therefor, shall be forfeited to the United States.

SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located.

28 STAT. 372, p. 422, AUGUST 18, 1894.

CAREY ACT.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895.

Be it enacted, etc. That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1895, namely:

* * * * * * *

SEC. 4. That to aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof

in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the act entitled "An act to provide for the sale of desert land in certain States and Territories," approved March 3, 1877 (19 Stat. 377), and the act amendatory thereof, approved March 3, 1891 (26 Stat. 1095), binding the United States to donate, grant, and patent to the State free of cost for survey or price such desert lands, not exceeding 1,000,000 acres in each State, as the State may cause to be irrigated, reclaimed, occupied and not less than 20 acres of each 160 acre tract cultivated by actual settlers, within 10 years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert land law.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

As fast as any State may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than 160 acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, $1,000.

A. DESERT LAND ACT.

1. COAL LANDS NOT SUBJECT TO PATENT.
2. MINERAL CHARACTER OF LAND—DETERMINATION.
3. STATE LANDS MUST BE NONMINERAL.

A. DESERT LAND ACT.

1. COAL LANDS NOT SUBJECT TO PATENT.

Where lands in the segregation list provided for in this act are classified as coal the department has no authority to patent the same to the State where there has been no approval of the patent list except under the provisions of the act of March 3, 1909 (35 Stat. 844).

Wyoming, In re, 38 L. D. 508, p. 512.
See Martin v. Gilbert, 38 L. D. 536, p. 537.

The Land Department has no authority to approve or patent to the State any known valuable deposits of coal or other minerals, and where lands sought by the State are actually coal lands, in the absence of the remedial legislation contained in the act of March 3, 1909 (35 Stat. 844), the listed tracts must be canceled, but that act saves to the claimant under the nonmineral laws who has initiated his claim in good faith the right to obtain patent to the surface, though it be shown that the land contains valuable deposits of coal.

Wyoming, In re, 38 L. D. 508, p. 512.
See Martin v. Gilbert, 38 L. D. 536, p. 537.

2. MINERAL CHARACTER OF LAND—DETERMINATION.

The character of the lands for which patent is sought, whether mineral or otherwise, is an open question subject to investigation and adjudication up to the time of final departmental approval of the patent list which then becomes the basis of the issuance of a patent to the State.

Wyoming, In re, 38 L. D. 508, p. 512.

3. STATE LANDS MUST BE NONMINERAL.

This act contemplates that the lands which are subject to listing for patent and for which patent is to issue to the State must be nonmineral in character and the acquirement of minerals by the State is expressly inhibited.

Wyoming, In re, 38 L. D. 508, p. 510.

29 STAT. 413, p. 434, JUNE 11, 1896.

LIEN OF STATE FOR COST OF RECLAMATION.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1897:

* * * * * * *

That under any law heretofore or hereafter enacted by any State, providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section 4 of an act entitled

"An act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1895," approved August 18, 1894 (28 Stat. 422), a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation: Provided, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liablility, in whole or in part.

* * * * * * *

A. MINERAL LANDS NOT SUBJECT TO LIEN FOR RECLAMATION EXPENSES.

Mineral lands not being within the purview of the grant provided in this act, the State can create no lien against the same.

Wyoming, In re, 38 L. D. 508, p. 512.

INDIAN LANDS.

I. MINERALS—RESERVATIONS—ALLOTMENTS—CLASSIFICATIONS, ETC.

II. COAL, OIL, AND ASPHALTUM LANDS—LEASES, page 989.

I. MINERALS—RESERVATIONS—ALLOTMENTS—CLASSIFICATIONS, ETC.

13 STAT. 673, OCTOBER 7, 1863.

TREATY—MINING RIGHTS RESERVED.

Treaty between United States and the Tabeguache Band of Utah Indians, etc.

Whereas a treaty was made and concluded at the Tabeguache Agency at Conejos, Colorado Territory, October 7, 1863, etc.

* * * * * * *

ART. 3. * * * The right of any citizen of the United States to mine without interference or molestation in any part of the country hereby retained by said Indians, where gold or other metals or minerals may be found, is hereby also conferred and guaranteed. And for all other purposes, excepting as herein stipulated, settlement by other persons than Indians is hereby prohibited.

13 STAT. 681, OCTOBER 12, 1863.

TREATY—MINING RIGHTS RESERVED.

Treaty between United States and the Shoshonee-Goship Bands of Indians.

Whereas a treaty was made and concluded at Tuilla Valley, in the Territory of Utah, on October 12, 1863, etc. * * *

ART. 4. It is further agreed by the parties hereto that the country of the Goship tribe may be explored and prospected for gold and silver, or other minerals and metals; and when mines are discovered they may be worked, and mining and agricultural settlements formed, and ranchos established wherever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes, in any part of said country.

14 STAT. 799, JULY 19, 1866.

TREATY.

Treaty between the United States of America and the Cherokee Nation of Indians; concluded July 19, 1866.

Whereas a treaty was made and concluded at the city of Washington, in the District of Columbia, on the 19th day of July, in the year of our Lord 1866, by and between Dennis N. Cooley and Elijah

Sells, Commissioners, on the part of the United States, and (certain persons named) delegates of the Cherokee Nation, appointed by resolution of the national council, on the part of said Cherokee Nation. * * *

ART. 17. * * * And the Secretary of the Interior shall from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders for cash in parcels not exceeding 160 acres, and at not less than the appraised value: Provided, That whenever there are improvements of the value of $50 made on the lands not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing thereof, such person so owning, and in person residing on such improvements, shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions which will include his improvements, not exceeding in the aggregate 160 acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land:

* * * * * * *

ART. 26. The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections and against hostilities of other tribes. They shall also be protected against interruptions or intrusion from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory. In case of hostilities among the Indian tribes, the United States agree that the party or parties commencing the same shall, so far as practicable, make reparation for the damages done.

A. INDIANS—CHEROKEES.

1. RIGHT TO BUY COMPLETE—TRANSFER.

See 22 Stat., 349.

Where the right of the actual owner and occupier at the date of the ratification of the treaty to buy the land is complete he may transfer to another such right and neither the right to buy nor the power to assign this right is limited or affected by reason of a coal deposit underlying a portion of the land where the land was used for agricultural purposes and was not known or recognized as mineral land as the term mineral land was used in the treaty with reference to other lands containing lead and zinc and perhaps other mineral deposits which were known to exist.

Stroud v. Missouri River, etc., R. Co., 23 Fed. Cas. 257, p. 260.

15 STAT. 619, MARCH 2, 1868.

TREATY.

Treaty between the United States of America and the Tabeguache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Ute Indians; concluded March 2, 1868.

Whereas a treaty was made and concluded at the city of Washington, in the District of Columbia, on the 2d day of March, in the year of our Lord 1868, by and between (certain persons for the United States and certain Indians here named) * * *

ART. 2. The United States agree that the following district of country, to wit, (here described) and the United States now solemnly agree that no persons, except those herein authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law shall ever be permitted to pass over, settle upon, or reside in the territory described in this article except as herein otherwise provided.

A. INDIAN LANDS.

1. EFFECT TO EXCLUDE MINING PROSPECTORS.
2. MINING LOCATIONS AFTER WITHDRAWAL—PRIORITY.

1. EFFECT TO EXCLUDE MINING PROSPECTORS.

The effect of this treaty was to exclude all intrusion for mining or other pursuits upon the territory reserved and it prohibited any entry for mining purposes upon the premises and not until the withdrawal of the land from this reservation by a new convention with the Indians, and one which would throw the lands open, could a mining location thereon be initiated and a location made while the treaty was in force was inoperative to confer any rights upon the locator.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 663.
Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 98.

On the withdrawal of this reservation by force of the act of April 29, 1874 (18 Stat. 36), the discovery of minerals by the locator of a mining claim must within three months thereafter under the statute of Colorado, February 13, 1874, record a certificate of his location as required by the Colorado statute in order to protect and preserve his rights in the claim, and a wrongful entry of the locator upon the premises during the existence of the Indian reservation is not effective as against a claimant who entered upon the premises immediately after withdrawal of the reservation and made a proper location certificate and caused the same to be recorded in compliance with the Colorado statute.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 665.

2. MINING LOCATIONS AFTER WITHDRAWAL—PRIORITY.

The location of a mining claim on an Indian reservation must date from the time of the withdrawal of the reservation, and a claim located after the date of such withdrawal will be prior and superior to a claim located previous to such time and not relocated until after such second location.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 663.
See Jones v. Wild Goose Min., etc., Co., 177 Fed. 95.

A mining location made while this treaty was in force was inoperative to confer any rights upon a locator; and a new location of the same claim made more than two years after the withdrawal of the reservation by the act of April 29, 1874 (18 Stat. 36), must yield to a prior withdrawal of such reservation.

Kendall v. San Juan Min. Co., 144 U. S. 658, p. 663.
See Noonan v. Caledonia Min. Co., 121 U. S. 393.

15 STAT. 635, APRIL 29, 1868.

BLACK HILLS—SIOUX TREATY.

Treaty between the United States of America and different tribes of Sioux Indians; concluded April 29, 1868.

Whereas a treaty was made and concluded at Fort Laramie in the Territory of Dakota (now in the Territory of Wyoming), on

April 29, and afterwards, in 1868, by and between (certain named persons) commissioners, on the part of the United States, and (certain named Indians) and other chiefs and headmen of different tribes of Sioux Indians, on the part of said Indians and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

* * * * * * *

ART. 2. The United States agrees that the following district of country, to wit, viz: Commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

NOTE.—This description includes the Black Hills.

18 STAT. 36, APRIL 29, 1874.

UTE NATION.

AN ACT To ratify an agreement with certain Ute Indians in Colorado, and to make an appropriation for carrying out the same.

Be it enacted, etc., That a certain agreement made by Felix R. Brunot, commissioner on the part of the United States, with certain Ute Indians in Colorado, be, and the same is hereby, ratified and confirmed. * * *

ARTICLE 1. The confederated band of the Ute Nation hereby relinquish to the United States all right, title, and claim and interest in and to the following-described portion of the reservation heretofore conveyed to them by the United States, viz: [Here describing]. * * *

ART. 5. All the provisions of the treaty of 1868 not altered by this agreement shall continue in force; and the following words, from article 2 of said treaty, viz: "The United States now solemnly agrees that no persons except those herein authorized to do so, and except such officers, agents, and employees of the Government as

may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, except as herein otherwise provided," are hereby expressly reaffirmed, except so far as they applied to the country herein relinquished.

A. INDIAN LANDS—WITHDRAWAL.

The effect of this treaty was to withdraw all the land embraced within the reservation from private entry and did not authorize a person to enter thereon and discover and locate a mining claim, but the Government was obliged to prevent its citizens from entering upon this reservation for any such purpose.

Kendall v. San Juan Silver Min. Co., 9 Colo. 349, p. 357.

A valid mining location can not be made upon a portion of the public domain withdrawn from entry for all purposes under an Indian treaty.

Kendall v. San Juan Silver Min. Co., 9 Colo. 349, p. 355.

19 STAT. 176, P. 192, AUGUST 15, 1876.

BLACK HILLS WITHDRAWAL.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1877.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with the various Indian tribes, * * * Provided, That none of said sums appropriated for said Sioux Indians shall be paid to any band thereof while said band is engaged in hostilities against the white people; and hereafter there shall be no appropriation made for the subsistence of said Indians, unless they shall first agree to relinquish all right and claim to any country outside the boundaries of the permanent reservation established by the treaty of 1868 for said Indians; and also so much of their said permanent reservation as lies west of the one hundred and third meridian of longitude (Black Hills), and shall also grant right of way over said reservation to the country thus ceded for wagon or other roads, from convenient and accessible points on the Missouri River, in all not more than three in number; and unless they will receive all such supplies herein provided for, and provided for by said treaty of 1868, at such points and places on their said reservation, and in the vicinity of the Missouri River, as the President may designate; and the further sum of $20,000 is hereby appropriated to be expended under the direction of the President of the United States for the purpose of carrying into effect the foregoing provision: And provided also, That no further appropriation for said Sioux Indians for subsistence shall hereafter be made until some stipulation, agreement, or arrangement shall have been entered into by said Indians with the President of the United States, which is calculated and designed to enable said Indians to become self-supporting: * * *

A. INDIAN LANDS.

1. WITHDRAWAL OF BLACK HILLS.
   a. PROTECTION TO MINERAL CLAIMANTS.
   b. RIGHTS OF MINERAL CLAIMANTS—COMPLIANCE WITH LAWS.

1. WITHDRAWAL OF BLACK HILLS.

a. PROTECTION TO MINERAL CLAIMANTS.

After an unsuccessful attempt to secure to the citizens of the United States the right to mine in the country known as the Black Hills, this act provided that thereafter there should be no appropriation made for the subsistence of the Sioux Indians unless they should first agree to relinquish all right and claim to all that part of their permanent reservation lying west of the one hundred and third meridian of longitude, and under a supplemental agreement concluded February 28, 1877 (19 Stat. 254), these Indians ceded and relinquished that portion of their reservation to the United States.

Noonan v. Caledonia Min. Co., 121 U. S. 393, p. 402.

The presence of miners on the Indian reservation known as the Black Hills prior to the adoption of this act and prior to the relinquishment and cession of the reservation by the Indians to the United States February 28, 1877 (19 Stat. 254), was illegal; but from that time it was legal and persons in possession of mining claims taken up and developed in accordance with the rules of miners in mining districts were entitled to protection of their possessory claims as against intruders.

Noonan v. Caledonia Min. Co., 121 U. S. 393, p. 402.

b. RIGHTS OF MINERAL CLAIMANTS—COMPLIANCE WITH LAWS.

The effect of the withdrawal of the Black Hills district from the Indian reservation and the consequent end of the prohibition against intrusion thereon was to leave persons in possession of mining claims exempt from liability to be disturbed from their unlawful entry on the land, and free to take measures under the mining laws for the protection of their claims.

Noonan v. Caledonia Min. Co., 121 U. S. 393, p. 402.

A person in possession of a mining claim, on the withdrawal of a reservation under an Indian treaty, who has the requisite discovery, with surface boundaries marked, and notice of location posted, can, by adopting what has been done and causing a proper record to be made, and performing the assessment work, hold the claim and date his rights from the day of such withdrawal.

Noonan v. Caledonia Min. Co., 121 U. S. 393, p. 403.
See Kendall v. San Juan Min. Co., 144 U. S. 658, p. 664.
Jones v. Wild Goose Min., etc., Co., 177 Fed. 95, p. 98.

All persons who made locations upon the Indian reservation prior to its cession could give evidence of what had been done by them, and show the locations of their claims, the extent and the amount of work done in development, not as creating an absolute right to the property, but as showing the existence and condition of the property when their possession became lawful under the new treaty with the Indians; and whether such persons should be protected in the possession of such claims depended upon their future compliance with the laws, statutory and mining, governing the possession and use of mineral lands in Dakota.

Noonan v. Caledonia Min. Co., 121 U. S. 393, p. 403.

38 STAT. 704, Chap. 289, AUGUST 22, 1914 (PUBLIC—NO. 182—63D CONGRESS).

QUINAIELT RESERVATION—MINERALS RESERVED IN LIGHTHOUSE GRANT.

AN ACT To authorize the withdrawal of lands on the Quinaielt Reservation, in the State of Washington, for lighthouse purposes.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to set aside not exceeding 206.75 acres of land at or near Cape Elizabeth, on the Quinaielt Indian Reservation, in the State of Washington, for lighthouse purposes * * *.

SEC. 2. That there is hereby reserved for the use and benefit of the Indians of the Quinaielt Reservation in common all oil, gas, coal, and other minerals in the lands set aside hereunder for lighthouse purposes, and the right to prospect for and mine these commodities under such rules and regulations as may be agreed upon by the Secretary of the Interior and the Secretary of Commerce.

19 STAT. 254, FEBRUARY 28, 1877.

SIOUX NATION—BLACK HILLS.

AN ACT To ratify an agreement with certain bands of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians.

Be it enacted, etc., That a certain agreement made by * * * commissioners on the part of the United States, with the different bands of the Sioux Nation of Indians, and also the Northern Arapaho and Cheyenne Indians, be, and the same is hereby, ratified and confirmed. * * *

ARTICLE 1. The said parties hereby agree that the northern and western boundaries of the reservation defined by article 2 of the treaty between the United States and different tribes of Sioux Indians, concluded April 29, 1868, and proclaimed February 24, 1869, shall be as follows:

The western boundaries shall commence at the intersection of the one hundred and third meridian of longitude with the northern boundary of the State of Nebraska; thence north along said meridian to its intersection with the South Fork of the Cheyenne River; thence down said stream to its junction with the North Fork; thence up the North Fork of said Cheyenne River to the said one hundred and third meridian; thence north along said meridian to the South Branch of Cannon Ball River or Cedar Creek; and the northern boundary of their said reservation shall follow the said South Branch to its intersection with the main Cannon Ball River, and thence down the said main Cannon Ball River to the Missouri River; and the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting; and article 16 of said treaty is hereby abrogated.

NOTE.—The part of the reservation relinquished and ceded to the United States includes the Black Hills.

21 STAT. 199, JUNE 15, 1880.

UTE TRIBE—COLORADO LANDS.

AN ACT Ratifying the agreement with the Ute Indians in Colorado for the sale of their reservation therein.

Whereas certain of the chiefs and head men of the confederated bands of the Ute tribe of Indians, now present in the city of Washington, have agreed upon and submitted to the Secretary of the Interior an agreement for the sale to the United States of their present reservation in the State of Colorado, their settlement upon lands in severalty, and for other purposes; and

Whereas the President of the United States has submitted said agreement, with his approval of the same, to the Congress of the United States for acceptance and ratification, and for the necessary legislation to carry the same into effect: Therefore

Be it enacted, etc. * * *

SEC. 3. That the Secretary of the Interior be, and he is hereby, authorized to cause to be surveyed, under the direction of said commissioners, a sufficient quantity of land in the vicinities named in said agreement, to secure the settlement in severalty of said Indians as therein provided. And upon the completion of said survey and enumeration herein required, the said commissioners shall cause allotments of lands to be made to each and all of the said Indians, in quantity and character as set forth in the agreement above mentioned, and whenever the report and proceedings of said commissioners, as required by this act, are approved by the President of the United States, he shall cause patents to issue to each and every allottee for the lands so allotted, with the same conditions, restrictions, and limitations mentioned therein as are provided in said agreement; and all the lands not so allotted, the title to which is, by the said agreement of the confederated bands of the Ute Indians, and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States and subject to disposal under the laws providing for the disposal of the public lands, at the same price and on the same terms as other lands of like character, except as provided in this act, Provided, That none of said lands, whether mineral or otherwise, shall be liable to entry and settlement under the provisions of the homestead law; but shall be subject to cash entry only in accordance with existing law; and when sold the proceeds of said sale shall be first sacredly applied to reimbursing the United States for all sums paid out or set apart under this act by the Government for the benefit of said Indians, and then to be applied in payment for the lands at $1.25 per acre which may be ceded to them by the United States outside of their reservation, in pursuance of this agreement. And the remainder, if any, shall be deposited in the Treasury as now provided by law for the benefit of the said Indians, in the proportion as hereinbefore stated, and the interest thereon shall be distributed annually to them in the same manner as the funds provided for in this act: Provided further, That the subdivisions upon which are located improvements to be appraised as provided for in section 2 of this act, shall be offered to the highest bidder at public sale, after

published notice of at least 30 days by the Secretary of the Interior, and the same shall be absolutely reserved from occupation or claim until so sold.

25 STAT. 35, FEBRUARY 18, 1888.

RAILROAD THROUGH INDIAN TERRITORY.

AN ACT To authorize the Choctaw Coal & Railway Company to construct and operate a railway through the Indian Territory.

Be it enacted, etc., That the Choctaw Coal & Railway Co., a corporation created under and by virtue of the laws of the State of Minnesota, be, and the same is hereby, invested and empowered with the right of locating, constructing, owning, equipping, operating, using, and maintaining a railway and telegraph and telephone line through the Indian Territory, beginning at a point on Red River (the southern boundary line), at the bluff known as Rocky Cliff in the Indian Territory, and running thence by the most feasible and practical route through the said Indian Territory to a point on the east boundary line, immediately contiguous to the west boundary line of Polk or Sevier Counties in the State of Arkansas; also, a branch line of railway to be constructed from the most suitable point on said main line for obtaining a feasible and practicable route in a northwesterly direction to the leased coal veins of the said Choctaw Coal & Railway Co. in Tobucksey County, Choctaw Nation; with the right to construct, use, and maintain such tracks, turnouts, branches, and sidings and extensions as said company may deem it in their interest to construct along and upon the right of way and depot grounds herein provided for. * * *

25 STAT. 663, FEBRUARY 13, 1889.

AMENDMENT.

AN ACT To amend an act entitled "An act to authorize the Choctaw Coal & Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," approved February 18, 1888.

Be it enacted, etc., That section 1 of the act entitled "An act to authorize the Choctaw Coal & Railway Co. to construct a railway through the Indian Territory, and for other purposes," approved February 18, 1888, be, and hereby is, amended to read as follows:

SECTION 1. That the Choctaw Coal & Railway Co., a corporation created under and by virtue of the laws of the State of Minnesota, be, and the same is hereby, invested and empowered with the right of locating, constructing, owning, equipping, operating, using, and maintaining a railway and telegraph and telephone line through the Indian Territory, beginning at a point on Red River (the southern boundary line), at the bluff known as Rocky Cliff in the Indian Territory, and running thence by the most feasible and practicable route through the said Indian Territory to a point on the east boundary line, immediately contiguous to the west boundary line of the State of Arkansas; also, a branch line of railway to be constructed from the most suitable point on said main line for obtaining a feasible and practicable route in a westerly or northwesterly direction to the leased coal veins of said Choctaw Coal & Railway Co., in Tobucksey

County, Choctaw Nation, and thence by the most feasible and practicable route to an intersection with the Atchison, Topeka & Santa Fe Railway at the most convenient point between Halifax station and Ear Creek, otherwise known as the North Fork of the Canadian River; with the right to construct, use, and maintain such tracks, turnouts, branches, and sidings and extensions as said company may deem it in their interest to construct along and upon the right of way and depot grounds herein provided for."

25 STAT. 113, p. 123, MAY 1, 1888.

MONTANA INDIANS.

AN ACT Ratifying an agreement with five Indian tribes in Montana.

* * * * * * *

SEC. 3. That lands to which the right of the Indians is extinguished under the foregoing agreement are a part of the public domain of the United States and are open to the operation of the laws regulating homestead entry, except section 2301 of the Revised Statutes, and to entry under the town-site laws and the laws governing the disposal of coal lands, desert lands, and mineral lands; but are not open to entry under any other laws regulating the sale or disposal of the public domain.

* * * * * * *

A. INDIAN LANDS.

1. MODE OF DISPOSAL.
2. RAILROAD—INDEMNITY SELECTIONS.
3. LOCATION—SOLDIERS' ADDITIONAL RIGHTS.

1. MODE OF DISPOSAL.

The modes of disposal specifically indicated are exclusive of any other manner of disposal and while the appropriation made by this act does not place the lands beyond the power of Congress so long as the laws remain unaltered, yet it controls the action of the Secretary of the Interior, under whose direction the selections must be made.

Bradley v. Northern Pac. R. Co., 36 L. D. 7, p. 8.
See Bradley v. Northern Pac. R. Co., 37 L. D. 410.

Congress specifically provides by this act under what law the lands should be disposed of and prohibits their disposal under any other, and these modes are necessarily exclusive of any other mode of appropriation, and the subsequent act of 1897 does not take away this inhibition or operate upon lands for the disposition of which specific provision had been made.

Bradley v. Northern Pac. R. Co., 36 L. D. 7, p. 8.
White, In re, 30 L. D. 536.
See Bradley v. Northern Pac. R. Co., 37 L. D. 410.

2. RAILROAD—INDEMNITY SELECTIONS.

The railroad company is not entitled under section 3 of this act to select, as indemnity lands, lands which are open to entry under the town-site laws and the laws governing the disposal of coal or mineral lands.

Bradley v. Northern Pac. R. Co., 36 L. D. 7.
Bradley v. Northern Pac. R. Co., 37 L. D. 410.

This act did not operate to reserve the lands restored by it to the public domain from selection by the railroad company.

Northern Pac. R. Co., In re, 37 L. D. 408, p. 409.
See Bradley v. Northern Pac. R. Co., 36 L. D. 7.

3. LOCATION—SOLDIERS' ADDITIONAL RIGHTS.

Lands in the former Indian reservations mentioned in this act are subject to appropriation under 2306 R. S. by location of soldiers' additional right.

Gunn, In re, 39 L. D. 561.
See Collins, In re, 39 L. D. 603.

36 STAT. 1060, MARCH 3, 1911.

MONTANA INDIANS—AMENDMENT.

AN ACT To amend section 3 of the act of Congress of May 1, 1888, and extend the provisions of section 2301 R. S. of the United States to certain lands in the State of Montana embraced within the provisions of said act, etc.

Be it enacted, etc., That section 3 of the act of May 1, 1888 (25 Stat. 113), ratifying and confirming an agreement with the various tribes or bands of Indians residing upon the Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Reservations, in Montana Territory, be, and the same is hereby, amended so as to read as follows:

"SEC. 3. That lands to which the right of the Indians is extinguished under the foregoing agreement are a part of the public domain of the United States and are open to the operation of laws regulating the entry, sale, or disposal of the same: Provided, That no patent shall be denied to entries heretofore made in good faith under any of the laws regulating entry, sale, or disposal of public lands, if said entries are in other respects regular and the laws relating thereto have been complied with."

A. AMENDMENT—EFFECT ON SOLDIERS' ADDITIONAL RIGHTS.

This amendment of section 3 of the act of May 1, 1888 (25 Stat. 133), removes any possible objection made under the former act to the location of soldiers' additional rights as such upon lands within such former Indian reservation, and any withdrawal or reservation made since extinguishment of the title of the Indians remains undisturbed by this act.

Gunn, In re, 39 L. D. 561, p. 564.

25 STAT. 157, MAY 24, 1888.

LANDS RESTORED TO PUBLIC DOMAIN—UINTAH VALLEY.

AN ACT To restore to the public domain a part of the Uintah Valley Indian Reservation, in the Territory of Utah, and for other purposes.

Be it enacted, etc., That so much of the Uintah Valley Indian Reservation, in the Territory of Utah, established by proclamation of the President, of date of October 3, 1861, as lies within the following boundary, namely: Beginning at milepost No. 19, Du Bois's survey, from the initial point, established in township 8 south, range 20 east, Salt Lake meridian; thence southerly to the northeast corner of township 2 south, range 1 east, Uintah special meridian; thence south along the east boundary of township 2 south, range 1 east,

Uintah special meridian, to the southeast corner of township 2 south, range 1 east, Uintah special meridian; thence east along the north boundary of township 3 south, range 2 east, Uintah special meridian, to its intersection with the east boundary of the Uintah Indian Reservation, thence in a northwest direction with the eastern boundary line of said reservation to the beginning, be, and the same is hereby, declared to be public lands of the United States and restored to the public domain.

SEC. 2. That said lands shall be disposed of at public or private sale, in the discretion of the Secretary of the Interior, and upon his order in quantities not exceeding one-quarter of a section to any one purchaser, the nonmineral lands for not less than $1.25 per acre, and not otherwise than for cash: Provided, That any location, entry, or entries, mineral or nonmineral, heretofore made or attempted to be made on said lands, or any part thereof, by any qualified person, shall bear date and be allowed the same as if said lands had been public lands at the time of said attempted location or institution of said proceedings, but said mineral entries shall not be completed except upon the payment of $20 an acre, or at that rate for the amount taken up by the claim: And provided further, That all moneys arising from the sales of this land shall belong to said Indians and be paid into the Treasury of the United States and held or added to any trust funds of said tribes now there.

25 STAT. 980, p. 1002, MARCH 2, 1889.

CŒUR D'ALENE TRIBE—MINERALS.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department for the year ending June 30, 1890.

Be it enacted, etc., * * *

SEC. 4. That the Secretary of the Interior be, and he is hereby, authorized and directed to negotiate with the Cœur d'Alene Tribe of Indians for the purchase and release by the said tribe of such portions of its reservation, not agricultural and valuable chiefly for minerals and timber, as such tribe shall consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress; and for the purpose of such negotiation, the sum of $2,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated; the action of the Secretary of the Interior hereunder to be reported to Congress at the earliest practicable time.

* * * * * * *

SEC. 13. That the lands acquired by the United States under said agreement shall be a part of the public domain, to be disposed of only as herein provided, and sections 16 and 36 of each township, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, to be established within the limits of said lands under such conditions and regulations as may be hereafter enacted by Congress.

That the lands acquired by conveyance from the Seminole Indians hereunder, except the sixteenth and thirty-sixth sections shall be disposed of to actual settlers under the homestead laws only, except

as herein otherwise provided (except that section 2301, R. S., shall not apply): And provided further, That any person who, having attempted to, but for any cause, failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands. * * *

A. INDIAN LANDS.

1. RELEASE BY CŒUR D'ALENE TRIBE.

Section 13 of this act is not in conflict with the provisions of the act of March 3, 1893 (27 Stat. 612, p. 642), and is extended by the latter act, and provides that the lands therein mentioned shall be a part of the public domain, to be disposed of only as herein provided, and no provision has been made in any other acts referred to in the act of March 3, 1893, for the disposition of such lands under the mining law.

Shirley, In re, 35 L. D. 113, p. 114.

25 STAT. 1013, p. 1015, MARCH 2, 1889.

PEORIAS AND MIAMIES.

AN ACT To provide for allotment of land to United [Peorias and Miamies in Indian Territory.

Be it enacted, etc., * * *

SEC. 2. That in making allotments under this act no more in the aggregate than 17,083 acres of said reservation shall be allotted to the Miami Indians, nor more than 33,218 acres in the aggregate to the United Peoria Indians; and said amounts shall be treated in making said allotments in all respects as the extent of the reservation of each of said tribes, respectively. If, in making said allotments, any difference shall arise between said tribes, all such matters of difference shall be determined by the Secretary of the Interior.

After the allotments herein provided for shall have been completed, the residue of the lands, if any, not allotted, shall be held in common under present title by said United Peorias and Miamies in the proportion that the residue, if any, of each of said allotments shall bear to the other. And said United Peorias and Miamies shall have power, subject to the approval of the Secretary of the Interior, to lease for grazing, agricultural, or mining purposes from time to time and for any period not exceeding 10 years at any one time, all of said residue, or any part thereof, the proceeds or rental to be divided between said tribes in proportion to their respective interests in said residue. And after said allotments are completed each allottee may lease or rent his or her individual allotment for any period not exceeding three years, the father acting for his minor children, and in case of no father then the mother, the chief acting for orphans of the tribe to which said orphans may belong.

26 STAT. 81, p. 95, 1 SUPP. R. S. 720, p. 734, MAY 2, 1890.

OKLAHOMA GOVERNMENT.

AN ACT To provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory.

* * * * * * *

SEC. 31. * * * That no attachment shall issue against improvements on real estate while the title to the land is vested in any

Indian nation, except where such improvements have been made by persons, companies, or corporations operating coal or other mines, railroads, or other industries under lease or permission of law of an Indian national council, or charter, or law of the United States.

* * * * * * *

A. INDIAN LANDS.

1. ATTACHMENT OF IMPROVEMENTS PROHIBITED.

The prohibition contained in this act against attaching improvements on Indian lands except such as are stated therein places such improvements beyond the reach of judicial process except such process as is issued on judgments obtained in the Indian courts.

Daugherty v. Bogy, 104 Fed. 938, p. 943.

26 STAT. 712, JANUARY 12, 1891.

MINERAL LANDS EXCEPTED.

AN ACT For the relief of the Mission Indians in the State of California.

Be it enacted, etc., That immediately after the passage of this act the Secretary of the Interior shall appoint three disinterested persons as commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided.

SEC. 2. That it shall be the duty of said commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the President and Secretary of the Interior. * * *

SEC. 3. That the commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section 4 of this act, for the period of 25 years, in trust, for the sole use and benfit of the band or village, to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village discharged of said trust, and free of all charge or incumbrance whatsoever: Provided, That no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain, unless such person shall acquiesce in and accept the appraisal provided for in the preceding section in all respects and shall thereafter, upon demand and payment of said appraised value, execute a release of all title and claim thereto; and a separate patent, in similar form, may be issued for any such tract or tracts, at any time thereafter. Any such person shall be

permitted to exercise the same right to take land under the public-land laws of the United States as though he had not made settlement on the lands embraced in said reservation; and a separate patent, in similar form, may be issued for any tract or tracts at any time after the appraised value of the improvements thereon shall have been paid: And provided further, That in case any land shall be selected under this act to which any railroad company is or shall hereafter be entitled to receive a patent, such railroad company shall, upon releasing all claim and title thereto, and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land of like value in lieu thereof, at such place as the Secretary of the Interior shall determine: * * *

SEC. 8. That previous to the issuance of a patent for any reservation as provided in section 3 of this act the Secretary of the Interior may authorize any citizen of the United States, firm, or corporation to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such reservation for agricultural, manufacturing, or other purposes, upon condition that the Indians owning or occupying such reservation or reservations shall, at all times during such ownership or occupation, be supplied with sufficient quantity of water for irrigating and domestic purposes upon such terms as shall be prescribed in writing by the Secretary of the Interior, and upon such other terms as he may prescribe, and may grant a right of way for rail or other roads through such reservation: Provided, That any individual, firm, or corporation desiring such privilege shall first give bond to the United States, in such sum as may be required by the Secretary of the Interior, with good and sufficient sureties, for the performance of such conditions and stipulations as said Secretary may require as a condition precedent to the granting of such authority: And provided further, That this act shall not authorize the Secretary of the Interior to grant a right of way to any railroad company through any reservation for a longer distance than 10 miles. And any patent issued for any reservation upon which such privilege has been granted, or for any allotment therein, shall be subject to such privilege, right of way, or easement. * * *

A. SELECTION BY COMMISSIONERS—MINERAL LANDS EXCLUDED.

Under the regulations made pursuant to this statute the commissioners can not select lands that have been returned as mineral in character and within 6 miles of mineral lands, and the regulations in this respect made for the protection of miners can not be disregarded.

Southern Pac. R. Co., In re, 25 L. D. 368, p. 370.

The railroad company under its grant is not entitled to receive a patent for tracts selected by the commissioners under this act where such tracts were at the time of the Government survey actually returned as mineral lands.

Southern Pac. R. Co., In re, 25 L. D. 368, p. 369.

27 STAT. 62, JULY 1, 1892.

COLVILLE RESERVATION.

AN ACT To provide for the opening of a part of the Colville Reservation, in the State of Washington, and for other purposes.

Be it enacted, etc., That subject to the reservations and allotment of lands in severalty to the individual members of the Indians of

the Colville Reservation in the State of Washington herein provided for, all the following described tract or portion of said Colville Reservation, namely: (Here follows description of land) * * * be, and is hereby, vacated and restored to the public domain, notwithstanding any Executive order or other proceeding whereby the same was set apart as a reservation for any Indians or bands of Indians, and the same shall be open to settlement and entry by the proclamation of the President of the United States and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington.

A. INDIAN LANDS—COLVILLE RESERVATION.

1. EFFECT OF ACT OPENING COLVILLE RESERVATION.
2. PREEMPTION ENTRY—APPLICATION TO PREFERENCE RIGHTS.
3. SELECTION BY INDIANS—MINERAL LANDS EXEMPTED.
4. MINING CLAIMS—RIGHT TO LOCATE ON RESERVATION.
5. COLVILLE RESERVATION NOT SUBJECT TO MINERAL LAWS.
6. OPENING OF COLVILLE RESERVATION—PROCLAMATION NECESSARY.

1. EFFECT OF ACT OPENING COLVILLE RESERVATION.

The fact that Congress by special act extended the mineral land laws so as to apply to this part of the Colville Reservation restored to the public domain by this act is not of sufficient argumentative force to deny this effect to this act where it appeared that the executive branch of the Government had denied the right of prospectors and miners and railroad builders to enter upon this part of the vacated reservation, but rather the subsequent act shows a continuity of purpose to remove the barriers in the way of mining operations and the construction of highways.

McFadden v. Mountain View Min., etc., Co., 87 Fed. 154, p. 156.

This act by mandatory words annuls the Executive order creating the former reservation and restores the part described to the public domain subject only to the right of the Indians to make selections of lands to be alloted to them, but does not permit the selection of lands for such purpose which are valuable for minerals, as it is the intention of the act to award to each Indian agricultural land, and accordingly prospectors and miners are not required to wait for the proclamation to open the tract for exploration for minerals.

Collins v. Bubb, 73 Fed. 735, p. 739.

2. PREEMPTION ENTRY—APPLICATION TO PREFERENCE RIGHTS.

"Preemption entry," when used in a statute relating to public lands, is to be understood in a restricted sense rather than comprehensively as being applicable to all cases in which a particular person may have a right to be preferred to others in the acquisition or purchase of public lands.

McFadden v. Mountain View Min., etc., Co., 87 Fed. 154, p. 156.
Hartman v. Warren, 76 Fed. 157.

3. SELECTION BY INDIANS—MINERAL LANDS EXEMPTED.

By this act Congress intended to secure to the Indians the right of first possession of such part of the tract as they were entitled to have allotted to them in severalty, and to avoid conflicting claims and disputes between them and white settlers, the power to fix a date in the future when the tracts should be open to such settlement

and entry was vested in the President, so that the Indians might have time to make their allotments before white settlers should come upon the tract, but there can be no such conflicting claims as to lands containing valuable deposits of mineral, as such lands are not subject to allotment by the Indians.

McFadden v. Mountain View Min., etc., Co., 87 Fed. 154, p. 155.
McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 673.
See Kendall v. San Juan Min. Co., 144 U. S. 658, p. 663.
Hartman v. Warren, 76 Fed. 157.

4. MINING CLAIMS—RIGHT TO LOCATE ON RESERVATION.

This statute does not authorize citizens of the United States to go upon that part of the Colville Reservation vacated and restored to the public domain by the act for the purpose of prospecting for minerals and locating mining claims thereon, without authorization or permission, and in advance of the Executive proclamation.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 678.
Overruling McFadden v. Mountain View Min., etc., Co., 87 Fed. 154.
Collins v. Bubb, 73 Fed. 735.

The fact that this statute restores to the public domain certain portions of the Colville Indian Reservation therein described does not of itself make it subject to entry and disposal under the mining or other general laws of the United States, as all of the public domain is not subject to entry and disposal under the mining and other general laws.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 679.

This act annulled from its date the former Executive order creating the reservation, and restored the lands described to the public domain, but did not of itself make the mineral lands therein open to location either by the Indians or citizens of the United States.

Collins v. Bubb, 73 Fed. 735, p. 738.

5. COLVILLE RESERVATION NOT SUBJECT TO MINERAL LAWS.

The fact that Congress did not intend by this act to open that portion of the Colville Indian Reservation thereby restored to the public domain to the operation of the mineral laws in advance of the proclamation of the President as provided for therein, is shown by the subsequent act of February 20, 1896 (29 Stat. 9), in which it expressly declared that the mineral laws of the United States are "hereby extended" so as to apply to this particular part of the Colville Reservation.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 678.
See Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 509.
Gibson v. Anderson, 131 Fed. 39, p. 41.

It can not be true that a portion of the Colville Reservation restored to the public domain by this act is any more open to the public in the exploration of minerals and the location of mining claims in advance of the President's proclamation than it is to any other kind of entry or settlement or disposition.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 680.
Overruling McFadden v. Mountain View Min., etc., Co., 87 Fed. 154.
See United States v. Blendauer, 128 Fed. 910.

6. OPENING OF COLVILLE RESERVATION—PROCLAMATION NECESSARY.

The restoration of this part of the Colville Reservation is accompanied with the express statutory declaration that it shall be open to settlement and entry by proclamation of the President of the United States and shall be disposed of under the general laws applicable to the disposal of public lands in the State of Washington, and it is

therefore apparent that the "opening" to be effected by such proclamation is as broad as was the "disposition" provided for by the act, and the lands authorized to be disposed of under general laws applicable to the disposal of the public lands are the same lands and none other that the President by his proclamation is authorized to open to settlement and entry

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 680.
Overruling McFadden v. Mountain View Min., etc., Co., 87 Fed. 154.
See United States v. Blendauer, 128 Fed. 910.

29 STAT. 9, FEBRUARY 20, 1896.

MINERAL-LAND LAWS EXTENDED—COLVILLE RESERVATION.

AN ACT To extend the mineral-land laws of the United States to lands embraced in the north half of the Colville Indian Reservation.

Be it enacted, etc., That the mineral-land laws of the United States be, and are hereby, extended so as to apply to all lands embraced within the Colville Indian Reservation, namely: (Here follows description.) * * * Provided, That the land used and occupied for school purposes at what is known as Tonasket School, on Bonapart Creek, and the site of the sawmill, gristmill, and other mill property on said reservation, is hereby reserved from the operation of this act, unless other lands are selected in lieu thereof as provided in section 6 of the act which became a law, without the approval of the President, July 1, 1892, entitled "An act to provide for the opening of a part of the Colville Reservation in the State of Washington, and for other purposes."

A. MINING LAWS EXTENDED TO INDIAN LANDS.

1. PROCLAMATION OF PRESIDENT.

This act extending the mineral-land laws to the Colville Indian Reservation indicates that Congress did not intend to subject the vacated portion of this reservation to the operation of the mineral law in advance of the proclamation of the President provided for therein.

McFadden v. Mountain View Min., etc., Co., 97 Fed. 670, p. 678.
See Gibson v. Anderson, 131 Fed. 39, p. 41.

30 STAT. 571, p. 593, JULY 1, 1898.

MINERAL ENTRY—COLVILLE RESERVATION.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1899.

Be it enacted, etc. * * * That the mineral lands only in the Colville Indian Reservation, in the State of Washington, shall be subject to entry under the laws of the United States in relation to the entry of mineral lands: Provided, That lands allotted to the Indians or used by the Government for any purpose or by any school shall not be subject to entry under this provision.

The right is hereby granted to cut timber for mining and domestic purposes, at such prices and subject to such regulations as may be prescribed by the Secretary of the Interior, from that portion of the Colville Indian Reservation in the State of Washington, which was vacated and restored to the public domain by the act of July 1, 1892,

entitled "An act to provide for the opening of a part of the Colville Reservation in the State of Washington and for other purposes" (27 Stat. 62), and the net proceeds arising from the disposition of said timber shall be set apart and disposed of according to the provisions of section 2 of said act of July 1, 1892, but primarily the expense incident to disposing of said timber, including compensation of such special agent as the Secretary of the Interior shall appoint, shall be paid out of any existing appropriation for the survey and allotment of said lands and shall be reimbursed and replaced from the proceeds arising from the disposition of the timber. The Indian allotments in severalty provided for in said act shall be selected and completed at the earliest practicable time and not later than six months after the proclamation of the President opening the vacated portion of said reservation to settlement and entry, which proclamation may be issued without awaiting the survey of the unsurveyed lands therein. Said allotments shall be made from lands which shall at the time of the selection thereof be surveyed, excepting that any Indian entitled to allotment under said act who has improvements upon unsurveyed land may select the same for his allotment, whereupon the Secretary of the Interior shall cause the same to be surveyed and allotted to him. At the expiration of six months from the date of the proclamation by the President, and not before, the nonmineral lands within the vacated portion of said reservation which shall not have been allotted to Indians as aforesaid, shall be subject to settlement, entry and disposition under said act of July 1, 1892. * * *

34 STAT. 80, MARCH 22, 1906.

SALE OF UNALLOTTED LANDS—COLVILLE RESERVATION.

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in Washington.

Be it enacted, etc. * * *

* * * * * * *

SEC. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timberlands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States, and, upon completion of the classification and appraisement, such surplus lands shall be open to settlement and entry under the provisions of the homestead laws at not less than their appraised value in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of $1.25 per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof. * * *

* * * * * * *

SEC. 6. That the proceeds not including fees and commissions arising from the sale and disposition of the lands aforesaid, including

the sums paid for mineral and town-site lands shall be, after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians belonging and having tribal rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit, under the direction of the Secretary of the Interior. * * *

A. INDIAN LANDS—COLVILLE RESERVATION.

1. REPORT OF COMMISSIONERS SHOWS MINERALS.

The commissioners report that much of the territory ceded under the act of July 1, 1892 (27 Stat. 62), abounds in rich mineral deposits.

Collins v. Bubb, 73 Fed. 735, p. 737.

27 STAT. 120, p. 126, July 13, 1892.

MINING CLAIMS ON INDIAN LANDS.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June 30, 1893.

Be it enacted, etc. * * *

No right of selection by, or allottment to the Crow Indians of Montana secured by the provisions of section 34 of the Indian appropriation act, approved March 3, 1891, shall be so used as to include mining claims nor shall they include lands settled upon, or improvements made by, qualified preemptors or homesteaders who were misled to settle on said reservation by reason of an erroneous survey by deputy United States surveyors of the public lands, or of said Crow Reservation, and who at the time they so settled there believed their said settlement was not on the said reservation: Provided, That nothing herein contained shall be construed to impair any rights acquired under any contract with the Crow Indians heretofore ratified by Congress.

27 STAT. 612, pp. 633, 640, MARCH 3, 1893.

SALINES RESERVED.

AN ACT Making appropriations for current and contingent expenses, and fulfilling treaty stipulations with Indian tribes, for fiscal year ending June 30, 1894.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June 30, 1894, and fulfilling treaty stipulations with the various Indian tribes, namely: * * *

It shall be the duty of said commission, or a majority of them, to superintend the sale of said lands, ascertain who are the true owners of the allotted lands, have guardians duly appointed for the minor heirs of any deceased allottees, make deeds of the lands to the purchasers thereof, subject to the approval of the Secretary of the Interior, which deed shall operate as a complete conveyance of the land upon the full payment of the purchase money; and the whole amount

received for allotted lands shall be placed in the Treasury to the credit of the Indian entitled thereto and the same shall be paid to him in such sums and at such times as the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, shall direct: * * * And provided further, That the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said commission for a period of 10 years from the date of the passage of this act, and no part of the allotted land shall be offered for sale until the Indian or Indians entitled to the same shall have signed a written agreement consenting to the sale thereof. * * *

SEC. 10. That the sum of $295,736, payable as hereinafter provided, is hereby appropriated out of any money in the Treasury not otherwise appropriated, and the Secretary of the Interior is hereby authorized and directed to contract to pay $8,300,000, or so much thereof as may be necessary in addition, to pay the Cherokee Nation of Indians for all the right, title, interest, and claims which the said nation of Indians may have in and to certain lands described and specified in an agreement concluded between (certain named persons), duly appointed commissioners on the part of the United States, and (certain named persons), duly appointed commissioners on the part of the Cherokee Nation of Indians in the Indian Territory, on December 19, 1891, bounded (here describing and known as the Cherokee Outlet).

A. INDIAN LANDS—SALINES EXCEPTED.
B. INDIAN ALLOTTEES—POWER OF ALIENATION, p. —.

A. INDIAN LANDS—SALINES EXCEPTED.

Lands ceded by the Indians and made open for settlement by this act expressly excepted certain saline lands known as the Eastern, Middle, and Western Saline Reserves, under the authority of the act of Congress of August 7, 1882 (22 Stat. 349).

Oklahoma v. Brooks, 29 L. D. 533, p. 534.

B. INDIAN ALLOTTEES—POWER OF ALIENATION.

This act deprived Indian allottees of the power of alienation for a period of 10 years after its passage, and after the expiration of such 10 years all restrictions were removed, leaving the land subject not only to voluntary but involuntary alienation.

Neilson v. Alberty, 36 Okla. 490, p. 496.

An affidavit of an applicant to enter a tract of land under this act, which states that the land does not contain any visible or known salt springs, salt rock, or other saline deposits, and is suitable for agricultural purposes, does not determine the character of the land, though it may justify an inquiry or an examination into the question, as all these lands should be treated as presumptively of saline character; but when it is ascertained that any of them are not saline, then disposition thereof can be made under the laws relating to public lands in the Cherokee Outlet.

Oklahoma v. Brooks, 29 L. D. 533, p. 535.

30 STAT. 1770, JULY 27, 1898.

PROCLAMATION—CHEROKEE OUTLET.

Whereas, in the opening of the Cherokee Outlet, pursuant to section 10 of the act of Congress approved March 3, 1893 (27 Stat. 612, p.

640), the lands known as the Eastern, Middle, and Western Saline Reserves were excepted from settlement in view of three leases made by the Cherokee Nation prior to March 3, 1893, under authority of the act of Congress approved August 7, 1882 (22 Stat. 349);

And whereas, it appears that said leases were never approved as provided by law;

Now, therefore, I, William McKinley, President of the United States, by virtue of the power in me vested by section 10 of said act of March 3, 1893, do hereby declare and make known that all the lands in said saline reserves, as described in a proclamation dated August 19, 1893 (28 Stat. 1227), are hereby restored to the public domain and will be disposed of under the laws of the United States relating to public lands in said Cherokee Outlet, subject to the policy of the Government in disposing of saline lands.

A. SALINES IN CHEROKEE OUTLET—RESTORED TO PUBLIC DOMAIN.

By this proclamation all the lands in the Cherokee Nation saline reserves were restored to the public domain for disposition under United States laws, subject to the policy of the Government in disposing of saline lands

Oklahoma v. Brooks, 29 L. D. 533, p. 534.

26 STAT. 1222, AUGUST 19, 1893.

PROCLAMATION—SALINES RESERVED.

Whereas, pursuant to section 10 of the act of Congress approved March 3, 1893 (27 Stat. 61), entitled, * * * the Cherokee Nation of Indians, by a written agreement made on May 17, 1893, has ratified the agreement for the cession of certain lands, hereinafter described, as amended by said act of March 3, 1893, and thereby ceded, conveyed, transferred, relinquished, and surrendered all its title, claim, and interest of every kind and character in and to that part of the Indian Territory (described), excepting also the saline lands covered by three leases made by the Cherokee Nation prior to March 3, 1893, known as the Eastern, Middle, and Western Saline Reserves, under authority of the act of Congress of August 7, 1882 (22 Stat. 349), said lands being described and identified as follows: The Eastern Saline Reserve embracing all (described), the Middle Saline Reserve embracing all (described), and the Western Saline Reserve embracing all (described).

29 STAT. 321, pp. 353, 357, 360, JUNE 10, 1896.

OCCUPATION AND PURCHASE.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1897, and for other purposes.

Be it enacted, etc., * * *

SEC. 8. * * * That upon the filing in the United States local land office for the district in which the lands surrendered by article 1 of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be open to occupation, location, and purchase, under the provisions of

the mineral-land laws only, subject to the several articles of the foregoing agreement: Provided, That said lands shall be sold at $10 per acre: And provided further, That the terms of this section shall not be construed to authorize the occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey: Provided, however, That any person who in good faith prior to the passage of this act had discovered and opened, or located, a mine of coal or other mineral, shall have a preference right of purchase for 90 days from and after the official filing in the local land office of the approved plat of survey provided for by this section.

NOTE.—The last proviso of this section is stricken out by an amendment. (See 30 Stat. 62, p. 93, sec. 10, p. 1001.

SEC. 9. * * * That upon the filing in the United States local land office for the district in which the lands surrendered by article 1 of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the terms of the several articles of the foregoing agreement: Provided, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey.

SEC. 10. * * * That upon the filing in the United States local land office for the district in which the lands surrendered by article 1 of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: Provided, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey: Provided, however, That any person who in good faith prior to the passage of this act had discovered and opened, or located, a mine of coal or other mineral, shall have a preference right of purchase for 90 days from and after the official filing in the local land office of the approved plat of survey provided for by this section.

A. INDIAN LANDS SURRENDERED—LOCATION OF MINING CLAIMS.

This statute expressly excepts mining locations or coal mines in the lands reserved by the act.

Eureka and Try Again Lode Claims, In re, 29 L. D. 158.

In an application for the location of a mine upon any of the lands contemplated in this act, the applicant must show that he has complied with other sections of the statute, and especially with the provisions of sections 2325 and 2326 of the Revised Statutes.

Eureka and Try Again Lode Claims, In re, 29 L. D. 158, p. 159.

31 STAT. 952, MARCH 2, 1901.

SALE UNDER MINING LAWS.

AN ACT To restore to the public domain a small tract of the White Mountain Apache Indian Reservation, in the Territory of Arizona.

Be it enacted, etc., That a small tract of the White Mountain Apache Indian Reservation, in the Territory of Arizona, established

by Executive orders dated (giving dates and descriptions); containing about 231 acres, be, and the same is hereby, restored to the public domain and declared to be open and subject to entry, location, and occupation under the mining laws of the United States: Provided, That said lands shall be sold under the provisions of the mining laws of the United States, and that all moneys accruing from the sale of the lands hereby restored, except the fees allowed by law to the register and receiver, shall be paid into the Treasury of the United States and applied solely as follows: etc.

31 STAT. 1083, MARCH 3, 1901.

DISPOSITION OF MINERAL LANDS.

AN ACT To supplement existing laws relating to the disposition of lands, etc.

Be it enacted, etc., That before the time for opening to settlement or entry of any of the lands in the Territory of Oklahoma, respectively ceded to the United States by the Wichita and affiliated bands of Indians, and the Comanche, Kiowa, and Apache tribes of Indians, under agreements respectively ratified by the acts of March 2, 1895 (28 Stat. 876, p. 894), and June 6, 1900 (31 Stat. 672, p. 676), it shall be the duty of the Secretary of the Interior to subdivide the same into such number of counties as will, for the time being, best subserve the public interests, and to designate the place for the county seat of each county, and to set aside and reserve at such county seat, for disposition as herein provided, 320 acres of land: Provided, That the Secretary of the Interior may attach any part of said lands to any adjoining county in said Territory.

The lands to be opened to settlement and entry under the acts of Congress ratifying said agreements respectively shall be so opened by proclamation of the President, and to avoid the contests and conflicting claims which have heretofore resulted from opening similar public lands to settlement and entry, the President's proclamation shall prescribe the manner in which these lands may be settled upon, occupied and entered by persons entitled thereto under the acts ratifying said agreements, respectively; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation until after the expiration of 60 days from the time when the same are opened to settlement and entry.

* * * * * * *

A. ACT APPLIES TO MINERAL AND HOMESTEAD CLAIMANTS.
B. PROCLAMATION OPENING SETTLEMENT.

A. ACT APPLIES TO MINERAL AND HOMESTEAD CLAIMANTS.

This act, as well as the proclamation of the President issued July 4, 1901 (32 Stat. 1975), applied to mineral claimants as well as to homestead claimants, and Congress did not intend to discriminate in favor of mineral claimants and against the homestead claimants.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 432.

B. PROCLAMATION OPENING SETTLEMENT.

Congress left the manner of the opening of these lands allotted to the Indians to settlement and entry to the determination of the President, and required him to incor-

porate the rules and regulations in his proclamation announcing the opening, and persons seeking to discover minerals and acquire homesteads were prohibited from entering upon the land until 60 days after the expiration of the time stated in the proclamation.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 432.
See 32 Stat. 1975.

32 STAT. 744, JUNE 19, 1902.

ALLOTMENTS—SPOKANE RESERVATION.

JOINT RESOLUTION Supplementing and modifying certain provisions of the Indian appropriation Act for the year ending June 30, 1903.

Resolved, etc., That the provisions of the act "Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1903, and for other purposes," are hereby supplemented and modified as follows:

The Secretary of the Interior is directed to make allotments in severalty to the Indians of the Spokane Indian Reservation in the State of Washington, and upon the completion of such allotments the President shall by proclamation give public notice thereof, whereupon the lands in said reservation not allotted the Indians or used or reserved by the Government, or occupied for school purposes, shall be opened to exploration, location, occupation, and purchase under the mining laws.

32 STAT. 982, p. 996, MARCH 3, 1903.

MINING CLAIMS—UTAH.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1904, and for other purposes.

Be it enacted, etc., * * *

That in the lands within former Uncompahgre Indian Reservation, in the State of Utah, containing gilsonite, asphaltum, elaterite, or other like substances, which were reserved from location and entry by provision in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1898 (30 Stat., 87), approved June 7, 1897, all discoveries and locations of any such mineral lands by qualified persons prior to January 1, 1891, not previously discovered and located, who recorded notices of such discoveries and locations prior to January 1, 1891, either in the State of Colorado, or in the office of the county recorder of Uintah County, Utah, shall have all the force and effect accorded by law to locations of mining claims upon the public domain. All such locations may hereafter be perfected, and patents shall be issued therefor upon compliance with the requirements of the mineral-land laws, provided that the owners of such locations shall relocate their respective claims and record the same in the office of the county recorder of Uintah County, Utah, within 90 days after the passage of this act. All locations of any such mineral lands made and recorded on or subsequent to January 1, 1891, are hereby declared to be null and void; and the remainder of the lands heretofore reserved as aforesaid because of

the mineral substances contained in them, in so far as the same may be within even-numbered sections, shall be sold and disposed of in tracts not exceeding 40 acres, or a quarter of a quarter of a section, in such a manner and upon such terms and with such restrictions as may be prescribed in a proclamation of the President of the United States issued for that purpose not less than 120 days after the passage of this act, and not less than 90 days before the time of sale or disposal, and the balance of said lands and also all the mineral therein are hereby specifically reserved for future action of Congress.

* * * * * * *

33 STAT. 151, MARCH 25, 1904.

PATENTS VALIDATED—BITTER ROOT VALLEY.

AN ACT To confirm and validate patents to certain lands situated in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River.

Be it enacted, etc., * * *

That all patents heretofore issued for lands in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River, designated in the act of June 5, 1872 (17 Stat., 226), in desert entries, preemption entries, mining entries, entries under the act of June 3, 1878 (20 Stat., 89), as extended to all the public land States by the act of August 4, 1892 (27 Stat., 348), commonly known as the timber and stone law, and for lands selected for the benefit of the University of the State of Montana prior to the passage of the act of August 3, 1894 (28 Stat., 222, Ch. 196), are hereby confirmed and said patents validated, to all intents and purposes the same as if the law under which said patents were issued was applicable to said lands.

33 STAT. 302, p. 303, APRIL 23, 1904.

SURVEY AND ALLOTMENT.

AN ACT For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Be it enacted, etc., * * *

SEC. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of 40 acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

SEC. 6. That said commission shall in their report of lands of the third class determine as nearly as possible the amount of standing saw timber on legal subdivisions thereof and fix a minimum price for the value thereof, and in determining the amounts of merchantable timbers growing thereon they shall be empowered to employ a timber cruiser, at a salary of not more than $8 per day while so

actually employed, with such assistants as may be necessary, at a salary not to exceed $6 per day while so actually employed. Mineral lands shall not be appraised as to value.

* * * * * * *

SEC. 8. That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections 16 and 36 of each township, which are hereby granted to the State of Montana for school purposes. * * *

SEC. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: Provided, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

33 STAT. 352, p. 360, APRIL 27, 1904.

MINERALS UNDER TOWN SITES.

AN ACT To ratify and amend an agreement with the Indians of the Crow Reservation in Montana, and making appropriation to carry the same into effect.

Be it enacted, etc., * * *

SEC. 5. * * * And provided further, That the price of said lands shall be $4 per acre, when entered under the homestead laws. * * * Lands entered under the town-site and mineral-land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws. * * *

33 STAT. 595, p. 596, DECEMBER 21, 1904.

MINERAL LANDS—DISPOSAL.

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington.

Be it enacted, etc., * * *

SEC. 3. That the residue of the lands of said reservation—that is, the lands not allotted and not reserved—shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the mineral lands, which need not be appraised, and the timber on the lands classified as timber lands shall be appraised separately from the land. The basis for the appraisal of the timber shall be the amount of standing merchantable timber thereon, which shall be ascertained and reported. * * *

The lands classified as mineral lands shall be subject to location and disposal under the mineral-land laws of the United States: Pro

vided, That lands not classified as mineral may also be located and entered as mineral lands, subject to approval by the Secretary of the Interior and conditioned upon the payment, within one year from the date when located, of the appraised value of the land per acre fixed prior to the date of such location, but at not less than the price fixed by existing law for mineral lands: Provided further, That no such mineral locations shall be permitted on any lands allotted to Indians in severalty or reserved for any purpose as herein authorized.

33 STAT. 1016, p. 1060, MARCH 3, 1905.

SALE OF MINERAL LANDS.

AN ACT To ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming, etc.

Whereas, etc., * * *

Be it enacted, etc., * * * that lands entered under the town-site, coal and mineral land laws shall be paid for in an amount and manner as provided by said laws; and in case any entryman fails to make the payments herein provided for, or any of them, within the time stated, all rights of the said entryman to the lands covered by his or her entry shall at once cease and any payments therebefore made shall be forfeited and the entry shall be held for cancellation and canceled, and all lands, except mineral and coal lands herein ceded, remaining undisposed of at the expiration of 5 years from the opening of said lands to entry shall be sold to the highest bidder for cash, at not less than $1 per acre, under rules and regulations to be prescribed by the Secretary of the Interior: And provided, That nothing herein contained shall impair the rights under the lease to Asmus Boysen, which has been approved by the Secretary of the Interior; but said lessee shall have for 30 days from the date of the approval of the surveys of said land a preferential right to locate, following the Government surveys, not to exceed 640 acres in the form of a square, of mineral or coal lands in said reservation; that said Boysen at the time of entry of such lands shall pay cash therefor at the rate of $10 per acre and surrender said lease and the same shall be canceled: Provided further, That any lands remaining unsold 8 years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price; that lands disposed of under the town-site, coal and mineral land laws shall be paid for at the prices provided for by law, and the United States agrees to pay the said Indians the proceeds derived from the sales of said lands, the amount so realized to be paid to and expended for said Indians in the manner hereinafter provided.

SEC. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, townsite, coal, and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President. * * *

Lands entered under the townsite, coal, and mineral land laws shall be paid for in amount and manner as provided by said laws. Notice of location of all mineral entries shall be filed in the local land office of the district in which the lands covered by the location are

situated, and unless entry and payment shall be made within three years from the date of location all rights thereunder shall cease; * * * that all lands, except mineral and coal lands, herein ceded remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash at not less than $1 per acre under rules and regulations to be prescribed by the Secretary of the Interior. * * *

A. INDIAN LANDS CEDED—WIND RIVER.

1. LANDS OPENED BY PROCLAMATION.
2. SIXTY-DAY PERIOD FOR ENTERING LAND—COMPUTATION.

1. LANDS OPENED BY PROCLAMATION.

The proclamation of the President, dated June 2, 1906 (34 Stat. 3208), opened the lands ceded by this act under the general provisions of the homestead, townsite, coal and mineral land laws of the United States on conditions prescribed in such proclamation.

Leclair v. Hawley, 18 Wyo. 23, p. 29.

2. SIXTY-DAY PERIOD FOR ENTERING LAND—COMPUTATION.

In computing the 60-day period in which lands could be entered under this act and under the proclamation of the President of June 2, 1906 (34 Stat. 3208), August 15, 1906, fixed as the date of opening to settlement, must be included in computing the 60-day period, and the 60-day period expired at midnight October 13, 1906, and a mining location made on October 14, 1906, was not premature.

Leclair v. Hawley, 18 Wyo. 23, p. 37.

35 STAT. 650, FEBRUARY 25, 1909.

SALE OF MINERAL LANDS—AMENDMENT.

AN ACT Extending the time for final entry of mineral claims within the Shoshone or Wind River Reservation in Wyoming.

Be it enacted, etc., That section 2 of the act of March 3, 1905 (33 Stat. 1016, p. 1021), being "An act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, and to make appropriations to carry the same into effect," be, and the same is hereby, amended so that all claimants and locators of mineral lands within the ceded portion of said reservation shall have five years from the date of location within which to make entry and payment instead of three years, as now provided by the said act.

34 STAT. 1015, p. 1036, MARCH 1, 1907.

MINERAL LANDS—CLASSIFICATION.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1908.

Be it enacted, etc., * * *

That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of 40

acres each, all of the remaining land embraced within said reservation (Blackfeet Indian Reservation). In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural lands of the first class; second, agricultural lands of the second class; third, grazing lands; fourth, timber lands; fifth, mineral lands, the mineral lands not to be appraised. * * *

That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the lands shall be disposed of under the general provisions of the homestead, mineral, and townsite laws of the United States, except such of said lands as shall have been classified as timber-lands, and except such sections 16 and 36 of each township, or any part thereof, for which the State of Montana has not heretofore received indemnity lands under existing laws, which sections, or parts thereof, are hereby granted to the State of Montana for school purposes. * * *

That the lands within said reservation not already previously entered, whether classified as agricultural, grazing, timber, or mineral lands, shall be subject to exploration, location, and purchase under the general provisions of the United States mineral and coal land laws, at the prices therein fixed, except that no mineral or coal exploration, location, or purchase shall be permitted upon any lands allotted to an Indian.

34 STAT. 3206, 3212, JUNE 2, 1906.

PROCLAMATION—SHOSHONE OR WIND RIVER RESERVATION.

Whereas, by an agreement between the Shoshone and Arapahoe tribes of Indians, belonging to the Shoshone or Wind River Reservation in the State of Wyoming * * * amended and ratified by act of Congress approved March 3, 1905 (33 Stat. 1016), the said Indian tribes ceded, granted, and relinquished to the United States all the right, title, and interest which they may have had to all of the unallotted lands embraced within said reservation, except (describing); and

Whereas, it was provided by said act of March 3, 1905 (33 Stat. 1021), that said unallotted lands ceded to the United States under said agreement should be disposed of under the provisions of the homestead, town-site, coal and mineral land laws of the United States, and should be opened to settlement and entry by proclamation of the President of the United States on June 15, 1906, which proclamation shall prescribe the manner in which the lands shall be settled upon, occupied, and entered by persons permitted to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter said lands except as prescribed in said proclamation, until after the expiration of 60 days from the time when the same are open to settlement and entry: * * *

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the said act and resolution of Congress, do hereby declare and make known that all the unallotted lands in the ceded portion of said reservation, except such as may at that time have been reserved for carrying out the provisions of said amended treaty relative to the rights of Asmus

Boysen, allowing him to locate in accordance with the Government surveys not to exceed 640 acres in the form of a square, of mineral or coal lands in said reservation, and to purchase the same, will, on and after August 15, 1906, in the manner hereinafter prescribed, and not otherwise, be opened to settlement, entry, and disposition under the general provisions of the homestead, town-site, coal, and mineral land laws of the United States.

* * * * * * *

The lands entered under the town-site, coal, and mineral land laws shall be paid for in amount and manner provided by the laws under which they are entered, and unless entry and payment under mineral locations shall be made within three years from date of location all rights thereunder shall cease.

All persons are especially admonished that under said act of Congress approved March 3, 1905, it is provided that no person shall be permitted to settle upon, occupy, or enter any of said lands except in the manner prescribed in this proclamation until after the expiration of 60 days from the time when the same are opened to settlement and entry. After the expiration of said period of 60 days, but not before, as herein prescribed, any of said lands remaining undisposed of may be settled upon, occupied, entered, or located under the general provisions of the homestead, town-site, coal and mineral land laws of the United States in like manner as if the manner affecting such settlement, occupancy, entry, and location had not been prescribed herein in obedience to law.

The Secretary of the Interior shall prescribe all needful rules and regulations necessary to carry into full effect the opening herein provided for.

A. PROCLAMATION OPENING CEDED LANDS.

1. SETTLEMENT PROHIBITED—LOCATION OF MINING CLAIMS.
2. MINERAL LOCATION—PAYMENT TO PRESERVE RIGHTS.

1. SETTLEMENT PROHIBITED—LOCATION OF MINING CLAIMS.

This proclamation does not prohibit persons from going upon or entering upon the ceded lands, but only prohibits the settlement upon or the occupancy thereof for the purpose of initiating any rights, but any such lands remaining undisposed of after the expiration of the 60-day period could immediately be located as a mining claim or for other purposes by persons already upon the land.

Leclair v. Hawley, 18 Wyo. 23, p. 39.

2. MINERAL LOCATION—PAYMENT TO PRESERVE RIGHTS.

By this proclamation lands in the Shoshone Indian Reservation ceded to the Government by the act of March 3, 1905 (33 Stat. 1016), entered under town-site, coal, and mineral land laws, must be paid for in amount and manner provided by the laws under which they are entered, and unless entry and payment under mineral locations are made within three years from date of location all rights thereunder shall cease.

Leclair v. Hawley, 18 Wyo. 23, p. 34.

35 STAT. 460, MAY 29, 1908.

CLASSIFICATION—CHEYENNE AND STANDING ROCK.

AN ACT To authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian Reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian Reservations in the States of South Dakota and North Dakota lying and being within the following described boundaries, to wit: (description).

SEC. 2. * * * Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress: Provided further, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections 2304 and 2305 R. S., as amended by the act of March 1, 1901 (31 Stat. 847), shall not be abridged.

SEC. 3. That the price of said lands entered as homesteads under the provisions of this act shall be fixed by appraisement as herein provided. The President of the United States shall appoint two commissions, one for each reservation, each commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections 16 and 36 in each of said townships, * * *. That said commissioners shall then proceed to personally inspect, classify, and appraise, in 160-acre tracts each, all of the remaining lands embraced within each reservation as described in section one of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised. * * *

35 STAT. 465, p. 467, MAY 29, 1908.

MINING LAWS EXTENDED.

AN ACT Authorizing a resurvey of certain townships in the State of Wyoming, and for other purposes.

Be it enacted, etc., * * *

SEC. 11. That all the provisions of the mining laws of the United States are hereby extended and made applicable to the undisposed-of lands in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River, designated in the act of June 5, 1872: Provided, That all mining locations and entries heretofore made or attempted to be made upon said lands shall be deter-

mined by the Department of the Interior as if said lands had been subject to mineral location and entry at the time such locations and entries were made or attempted to be made: And provided further, That this act shall not be applicable to lands withdrawn for administration sites for use of the Forest Service.

35 STAT. 558, p. 561, MAY 30, 1908.

FORT PECK LANDS OPENED—MINERALS RESERVED.

AN ACT For the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment.

Be it enacted, etc., That the Secretry of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and to cause an examination of the lands within such reservation to be made by the Reclamation Service and by experts of the Geological Survey, and if there be found any lands which it may be deemed practicable to bring under an irrigation project, or any lands bearing lignite coal, the Secretary of the Interior is hereby authorized to construct such irrigation projects and reserve such lands as may be irrigable therefrom, or necessary for irrigation works, and also coal lands as may be necessary to the construction and maintenance of any such projects.

* * * * * * *

SEC. 6. That said commissioners shall then proceed to personally inspect and classify and appraise by the smallest legal subdivisions of 40 acres each all of the remaining lands embraced within said reservation. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land; second, grazing land; third, arid land; fourth, mineral land, the mineral land not be appraised; that said commissioners shall be paid a salary of not to exceed $10 per day each while actually employed in the inspection and classification of said lands, such inspection and classification to be completed within nine months from the date of the organization of said commission.

SEC. 7. That when said commission shall have completed the classification and appraisement of said lands, and the same shall have been approved by the Secretary of the Interior, the lands shall be disposed of under the general provisions of the homestead, desert-land, mineral, and town-site laws of the United States, except sections 16 and 36 of each township, or any part thereof, for which the State of Montana has not heretofore received indemnity lands under existing laws, which sections, or parts thereof, are hereby granted to the State of Montana for school purposes. And in case either of said sections, or parts thereof, is lost to the State by reason of allotment thereof to any Indian or Indians, or by reservation or withdrawal under the provisions of this act or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized to select other unoccupied, unreserved, nonmineral lands within said reservation, not exceeding two sections in any one township, which selections must be made within the 60 days immediately prior to the date fixed by the President's proclamation opening the surplus

lands to settlement: Provided, That the United States shall pay to the said Indians for the lands in said sections 16 and 36, so granted, or the lands within said reservation selected in lieu thereof, the sum $1.25 per acre.

* * * * * * *

SEC. 12. That the lands within said reservation however classified, shall, on and after 60 days from the date fixed by the President's proclamation opening said lands, be subject to exploration, location, and purchase under the general provisions of the United States mineral and coal land laws at not less than the price therein fixed and not less than the appraised value of the land, except that no mineral or coal exploration, location, or purchase shall be permitted upon any lands allotted to Indians or withdrawn under the provisions of this act.

36 STAT. 449, MAY 27, 1910.

SALE OF SURPLUS—PINE RIDGE.

AN ACT To authorize the sale and disposition of the surplus and unallotted lands in Bennett County, in the Pine Ridge Indian Reservation, in the State of South Dakota, and making appropriation to carry the same into effect.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Pine Ridge Indian Reservation, in the State of South Dakota, lying and being in Bennett County and described as follows: [description] Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation. * * *

SEC. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to said proclamation the allotments within the portion of the said Pine Ridge Reservation to be disposed of as described herein shall have been completed. * * * The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior, or otherwise disposed of, and excepting sections 16 and 36 or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships. * * * That within 20 days after their appointment the said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect, classify, and appraise, in 160-acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section 1 of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the

first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: Provided, That timber lands shall be classified without regard to acreage.

* * * * * * *

38 STAT. 448, MAY 30, 1910.

SALE OF SURPLUS—ROSEBUD.

AN ACT To authorize the sale and disposition of a portion of the surplus and unalloted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, * * * except such portions thereof as have been or may be hereafter allotted to Indians or otherwise reserved, and except lands classified as timber lands: Provided, That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation.

SEC. 2. That the lands shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to said proclamation the allotments within the portion of the said Rosebud Reservation to be disposed of as prescribed herein shall have been completed. * * *

* * * * * * *

* * * The President shall appoint a commission to consist of three persons to classify, appraise, and value all of said lands that shall not have been alloted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections 16 and 36 or other lands which may be selected in lieu thereof by the State of South Dakota, in each of said townships. * * * The said commissioners shall then proceed to personally inspect, classify, and appraise, in 160-acre tracts each, all of the remaining unallotted lands embraced within that portion of the reservation described in section 1 of this act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timber land; fifth, mineral land, if any, but the mineral and timber lands shall not be appraised: Provided, That timber lands may be classified without regard to acreage: And provided further, That all lands classified as timber lands shall be reserved for the use of the Rosebud Indians.

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36 STAT. 1058, pp. 1064, 1075, MARCH 3, 1911.

FORT HALL RESERVATION—STONE QUARRIES RESERVED.

AN ACT Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1912.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated out of any money in the Treasury not otherwise appropriated for the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries for which are provided for herein for the service of the fiscal year ending June 30, 1912, namely:

* * * * * * *

That the Secretary of the Interior is hereby authorized to set aside and reserve so much of the timber land of the Fort Hall Reservation as he may deem necessary to provide timber for the domestic use of the Indians, not exceeding in aggregate two townships of land; * * * and the said Secretary is hereby authorized to set aside and reserve certain lands chiefly valuable for the stone quarries situated thereon, not to exceed in aggregate 320 acres of land; and authority is hereby granted the said Secretary to lease said stone quarries, or, in his discretion, to operate said quarries for the benefit of the Indians of the Fort Hall Reservation and to sell the stone quarried therefrom, the net proceeds derived from said quarries to be deposited in the Treasury of the United States to the credit of said Indians and expended for their benefit in such manner as the said Secretary may prescribe.

* * * * * * *

The Secretary of the Interior is authorized to sell and convey the lands, buildings, and other appurtenances of the old Fort Spokane Military Reservation, now used for Indian school purposes, and adjoining the Colville Reservation, in the State of Washington, containing approximately 640 acres, and to use the proceeds thereof not to exceed $35,000 in the establishment and maintenance of such new schools and administration of affairs as may be required by the Colville and Spokane Indians in said State: Provided, That the Secretary of the Interior is authorized in his discretion to reserve from sale or other disposition any part of said reservation chiefly valuable for power sites and reservoir sites and land valuable for minerals: Provided further, That in the case of land reserved on account of minerals, the Secretary of the Interior may sell the surface under such regulations as he may prescribe: Provided further, That, in the discretion of the Secretary of the Interior, the surface of the lands may be sold separate from any minerals that may be found thereunder.

The Secretary of the Interior shall report to Congress at its next session his action in the premises.

37 STAT. 86, APRIL 18, 1912.

MINERAL RIGHTS AND ROYALTIES.

AN ACT Supplementary to and amendatory of the act entitled "An act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma," approved June 28, 1906, etc.

Be it enacted, etc., That until the inherited lands of the deceased members of the Osage Tribe of Indians shall be partitioned or sold the Secretary of the Interior be, and he hereby is, authorized to pay the taxes on said land out of any money due and payable to the heirs from the segregated decedent's funds in the Treasury of the United States.

* * * * * * *

SEC. 4. That nothing herein shall be construed as in any way changing the rights of the Osage Tribe in oil, gas, coal, and other minerals as fixed in the Osage Act of June 28, 1906 (34 Stat. 543), or in any manner be construed to change or amend the provisions of said act in regard to oil, gas, coal, or other minerals.

* * * * * * *

SEC. 10. That section 4, paragraph 4, of the Osage allotment act, approved June 28, 1906 (34 Stat. 539), be, and the same hereby is, amended to read as follows:

"Fourth. There shall be set aside and reserved from the royalties received from oil, gas, or other tribal mineral rights or other tribal funds, however arising, not to exceed $40,000 per annum for agency purposes and as an emergency fund, which money shall be paid out from time to time upon the requisition of the Osage tribal council with the approval of the Secretary of the Interior: Provided, That the provision of the act entitled 'An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with the various Indian tribes for the fiscal year ending June 30, 1898, and for other purposes,' approved June 7, 1897 (30 Stat. 90), limiting the amount of money to be expended for salaries of regular employees at any one agency shall not hereafter apply to the Osage Agency.

* * * * * * *

II. COAL, OIL, AND ASPHALTUM LANDS—LEASES.

22 STAT. 178, JULY 28, 1882.

LANDS MADE PUBLIC—UTE INDIANS.

AN ACT Relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians.

Be it enacted, etc., That all of that portion of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Utes be, and the same is hereby, declared to be public land of the United States, and subject to disposal from and after the passage of this act, in accordance with the provisions and under the restrictions and limitations of section 3 of the act of Congress approved June 15, 1880 (21 Stat. 199), chapter 223, except as hereinafter provided, under regulations to be prescribed by the Secretary of the Interior in accordance with the provisions of this act.

* * * * * * *

SEC. 3. That all entries, settlements, or locations heretofore made, under any law of the United States, by duly qualified persons, upon a strip of land extending northerly and southerly, not exceeding 10 miles in width, within that part of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Ute Indians, and bounded on the east by the one hundred an seventh meridian of longitude west from Greenwich, shall legally date from the time they were respectively made; and the rights of said persons shall be in all respects the same as if the lands had been legally subject to their claims when the same were initiated: Provided, however, That if homestead entries have been made on said strip the lands so entered shall be paid for in cash, after proof which would be satisfactory under the preemption laws: And provided further, That none of said lands shall be disposed of for any consideration other than cash, nor for a less price than $1.25 per acre.

A. COAL LANDS—UNLAWFUL ENTRY PROTECTED.
B. PRICE OF COAL LANDS, p. 990.
C. FAILURE TO COMPLY WITH STATUTE—EFFECT, p. 990.

A. COAL LANDS—UNLAWFUL ENTRY PROTECTED.

The occupation of land within this 10-mile strip at any time after 1868 and prior to the date of this act was irregular and contrary to law and the occupants acquired no rights by reason of such occupation, or of any improvements made thereon, as in the eye of the law they were trespassers; but this act extended to them a protection which they could not claim under the general laws and legalize their otherwise illegal occupation and permitted them to hold and ultimately acquire title to coal lands which they had entered.

Foster, In re, 2 L. D. 730, p. 733.

B. PRICE OF COAL LANDS.

This act does not affect the price of coal lands, and the general rule that the price depends upon the circumstances at the date of entry must be followed without regard to lands in the 10-mile strip mentioned herein.

Foster, In re, 2 L. D. 730, p. 733.

The question of the price of coal land within the 10-mile strip depends upon the construction of this act, and the act was remedial in its nature, and accordingly the price of coal land is not affected by the act, and the general rule that the price depends upon the circumstances at the date of entry must be followed with regard to lands within the 10-mile strip as well as in other cases.

Foster, In re, 2 L. D. 730, p. 733.

The fact that the act provides that the price of the land in this 10-mile strip shall not be less than $1.25 per acre is not controlling, and the price must be determined by the general law fixing the price of coal land, and the land must be paid for at the rate of $20 per acre where it lies within 15 miles of a completed railroad, accessible or otherwise.

Foster, In re, 2 L. D. 730, p. 733.

Delay in payment of the purchase price not being due to the laches of the parties, the right to purchase the land at $10 per acre is among the rights contemplated by this act.

Foster, In re, 2 L. D. 730, p. 733.

C. FAILURE TO COMPLY WITH STATUTE—EFFECT.

Where an application for coal lands shows that the applicant failed either to comply with the law requiring a declaratory statement to be filed within 60 days, or he did not enter into possession of the lands and commence improvement thereon during their suspension from sale, or before such suspension, the applicant can not claim relief under the statute, for his rights can not be regarded as "heretofore" acquired under the latter alternative, and under the former he lost all rights acquired during the suspension by his failure to comply with the act.

Foster, In re, 2 L. D. 730, p. 734.

Rights acquired by persons during the suspension from sale of lands located in the 10-mile strip described in section 3 of this act were lost by failure to file declaratory statements within 60 days from the passage of this act.

Foster, In re, 2 L. D. 730, p. 734.

22 STAT. 582, p. 590, MARCH 3, 1883.

PROCEEDS OF SALES OF COAL, ETC.

AN ACT Making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1883.

Be it enacted, etc., * * *

* * * * * * *

The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

25 STAT. 783, p. 784, 1 SUPP. R. S. 670, p. 671, MARCH 1, 1889.

MINING LEASES—JURISDICTION OF COURTS.

AN ACT To establish a United States Court in the Indian Territory.

Be it enacted, etc., * * *

SEC. 6. That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizen of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages or money claimed shall amount to $100 or more: Provided, That nothing herein contained herein shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only: And provided further, That all laws having the effect to prevent the Cherokee, Choctaw, Creek, Chickasaw, and Seminole Nations, or either of them, from lawfully entering into leases or contracts for mining coal for a period not exceeding 10 years, are hereby repealed; and said court shall have jurisdiction over all controversies arising out of said mining leases or contracts and of all questions of mining rights or invasions thereof where the amount involved exceeds the sum of $100.

* * * * * * *

A. COURTS IN INDIAN TERRITORY.
B. COAL LEASE—POWER OF INDIAN NATION TO EXECUTE.

A. COURTS IN INDIAN TERRITORY.

1. JURISDICTION—COAL LEASES.

The Federal courts have concurrent jurisdiction with the courts of the Indian nations of actions involving the construction of leases or contracts for mining coal under this statute.

Standley v. Roberts, 59 Fed. 836, p. 845.

B. COAL LEASE—POWER OF INDIAN NATION TO EXECUTE.

A person in the lawful possession and entitled to the usufruct of lands in the Choctaw Nation can grant leases to mine coal on such lands for such royalties as might be agreed upon.

Atoka Coal & Min. Co. v. Adams, 104 Fed. 472.
See Ellis v. Fitzpatrick, 118 Fed. 430.
McBride v. Farrington, 131 Fed. 797, p. 802.

A coal lease by an Indian nation without any definite period of time for which it will run is valid and authorizes the mining of coal for a period not exceeding 10 years.

McBride v. Farrington, 149 Fed. 114, p. 115.

A lease by an Indian nation for the mining of coal, iron, petroleum, oil, gas, asphaltum, and other minerals is valid as to coal though void as to all other minerals.

McBride v. Farrington, 149 Fed. 114, p. 115.

This section repeals all laws theretofore enacted to prevent the Chickasaw Indian Nation, as well as other Indian nations, from lawfully making leases for mining coal for a period not exceeding 10 years and jurisdiction over all controversies arising out of such leases is expressly vested in the Federal court established by the act, and coal

leases which do not transfer the title if made pursuant to the laws of the nation, and not in violation of some particular statute of the United States, are valid.

McBride v. Farrington, 131 Fed. 797, p. 805.

This amendment repeals all laws theretofore enacted to prevent any Indian nation from lawfully making leases for mining coal for a period not exceeding 10 years.

McBride v. Farrington, 149 Fed. 114, p. 115.

26 STAT. 640, OCTOBER 1, 1890.

COAL LEASES—CHOCTAW NATION.

AN ACT Giving the assent of the United States to certain leases of rights to mine coal in the Choctaw Nation.

Be it enacted, etc., That the consent of the United States is hereby given, upon the conditions and with the limitations hereinafter set forth, and no farther, to the following described leases of coal rights, which citizens of the Choctaw Nation have made to the Choctaw Coal & Railway Co., a corporation created by the laws of the State of Minnesota, copies of which leases, 11 in number, have been filed and deposited with the Secretary of the Interior, namely: (Here follows a description of the 11 different leases.) * * *

Second. That no one of said leases shall continue in force for a longer period than 30 years from the passage of this act.

Third. That the lessees, or those holding under them, shall, during the first week of each month, render to the Secretary of the Interior a statement under the oath of its president, or at least one of any joint owners under said lessee (leases), showing the amount of coal taken from the mines covered by said leases as herein prescribed, for the month preceding, and the royalties paid to the said Choctaw Nation, and the individual citizens holding said rights, and the price per ton the same has been sold by those having the right to mine the same under the said leases.

Fourth. That no higher rate per ton than the average rate per ton for which such coal has for the next six months next preceding the 1st day of September, 1890, been sold by said lessees, or those holding under them, shall, during said 30 years, be exacted of any purchaser, except upon the written permission of the Secretary of the Interior.

Fifth. That all the obligations of said leases, except as the same may be herein modified or limited, shall be faithfully preserved and performed by said lessees, or those holding under them, and that no right shall be claimed or exercised in the lands covered by said leases or the surface thereof, except such as shall be proper and necessary for the profitable development and working of the mines therein, and ingress and egress to and from the same, and for the erection and maintenance of necessary and proper machinery for said purposes.

SEC. 2. That the consent hereby given shall in no way impair or affect the rights which any person or persons, or the Chickasaw Nation of Indians, may have had before the passage of this act in and to the subject-matter of said leases. And nothing in this act contained shall be construed as validating, impairing, or in any way affecting the right of the lessors to make the same, or the authority under or by virtue of which they have been executed or any other lease or leases already or hereafter made.

SEC. 3. That any violation of, or failure to conform to, any of the conditions or limitations herein set forth on the part of the said

lessees, or those holding under them, shall be taken and deemed to be a forfeiture and revocation of the consent herein given without further action on the part of the United States.

26 STAT. 794, p. 795, FEBRUARY 28, 1891.

LEASE OF ALLOTMENTS—AMENDMENT.

AN ACT To amend an act approved February 8, 1887, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes."

Be it enacted, etc., * * *

SEC. 3. That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty can not personally and with benefit to himself occupy and improve his allotment or any part thereof the same may be leased upon such terms, regulations, and conditions as shall be prescribed by such Secretary, for a term not exceeding 3 years for farming or grazing, or 10 years for mining purposes: Provided, That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed 5 years for grazing, or 10 years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

A. OIL LEASE BY OSAGE NATION TO FOSTER.

1. RIGHTS OF ASSIGNEE.
2. CONSTRUCTION—"CULTIVATED INCLOSURES."

1. RIGHTS OF ASSIGNEE.

The assignee of a part of an oil lease made by the Osage Nation to Edwin B. Foster, March 16, 1896, has the same rights to prospect for, drill, and bore wells upon the land as the original grantee would have had under the original lease and its subsequent extension.

Barnsdall Oil Co. v. Leahy, 195 Fed. 731, p. 732.

2. CONSTRUCTION—"CULTIVATED INCLOSURES."

The lease by the Osage Nation to Edwin B. Foster under the authority of this act provided, among other things, that the lessee or those acting under him should not prospect for, drill, or bore any wells for the production of oil or gas within or upon any cultivated inclosure on the reservation without the written consent of the occupant duly acknowledged before the United States Indian agent, and the term "any cultivated inclosure" includes an inclosure made and cultivated after, as well as one made and cultivated before, the date of the lease, and the purpose of the provision was to prevent detriment to the agricultural interests of the country and at the same time to permit mining for oil and gas.

Barnsdall Oil Co. v. Leahy, 195 Fed. 731, p. 735.

Under the provisions of a lease executed by the Osage Nation prohibiting the lessee from prospecting for or drilling or boring any wells for the production of oil and gas

upon any cultivated inclosure, a controversy as to whether the lessor began the cultivation of an uncultivated tract before the lessee took any steps to locate and prospect for or drill wells thereon, must be determined in favor of the lessor who first, by open and notorious acts, in good faith commenced and with diligence proceeded to subject an uncultivated tract to his use, and after such commencement all subsequent acts relate back to the initiation of his first proceeding.

Barnsdall Oil Co. v. Leahy, 195 Fed. 731, p. 736.

A provision in a lease executed by the Osage Nation under the authority of this act to the effect that neither the lessee nor his assigns shall prospect for, or drill or bore any wells for the production of oil and gas within or upon any cultivated inclosure can not be extended to include a large area of uncultivated land with a tract of cultivated land all within the same inclosure, and can not be held to prohibit the prospecting for or drilling or boring for oil and gas on an uncultivated tract within an inclosure containing a cultivated tract, if such operations do not unnecessarily interfere with the use of the cultivated tract for agricultural purposes.

Barnsdall Oil Co. v. Leahy, 195 Fed. 731, p. 736.

26 STAT. 989, pp. 1026, 1031, 1036, MARCH 3, 1891.

LEASES.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1892.

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department for the year ending June 30, 1892, and fulfilling treaty stipulations with the various Indian tribes, namely: * * *

SEC. 18. That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the governor thereof, under regulations to be prescribed by the Secretary of the Interior.

* * * * * * *

SEC. 22. That all lands so sold and released to the United States, as recited or described in both of said agreements, and not heretofore granted or reserved from entry or location, shall, on the passage of this act, be restored to the public domain, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law, except section 2301 of the Revised Statutes of the United States, which shall not apply, and under the law relative to town-sites or to locators or purchasers under the mineral laws of the United States: Provided, That each settler or purchaser under and in accordance with the provisions of said homestead act, shall pay to the United States, for the lands so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of $1.50 per acre, one-half of which shall be paid within two years.

* * * * * * *

SEC. 34. That whenever any of the lands acquired by the agreement with the said Crow Indians hereby ratified and confirmed shall by operation of law or the proclamation of the President of the United

States be open to settlement, they shall, except mineral lands, be disposed of to actual settlers only, under the provisions of the homestead laws, except section 2301 of the Revised Statutes, which shall not apply: Provided, however, That each settler, under and in accordance with the provisions of said homestead laws, shall, before receiving a patent for his homestead, pay to the United States for the lands so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry the sum of $1.50 for each acre thereof one-half of which shall be paid within two years; and any person otherwise qualified who has attempted to, but for any cause failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon any of said lands in conformity with the provisions of this section. That any person who may be entitled to the privilege of selecting land in severalty under the provisions of article 6 of the treaty of May 7, 1868, with the Crow Indians, and which provisions were continued in force by the agreement with said Indians ratified and confirmed by the act of Congress, approved April 11, 1882, or any other act or treaty, shall have the right for a period of 60 days to make such selection in any part of the Territory by said agreement ceded, and such locations are hereby confirmed: Provided, further, That all white persons who located upon said Crow reservation by reason of an erroneous survey of the boundary and were afterward allowed to file upon their location in the United States Land Office, shall have 30 days in which to renew their filings, and their locations are hereby confirmed, and that in all cases where claims were located under the mining laws of the United States, and such location was made prior to December 1, 1890, by a locator qualified therefor who believed that he or she was so locating on lands outside the Crow Indian Reservation, such locator shall be allowed 30 days within which to relocate the said mining claims so theretofore located by them, within the limits of the ceded portion of said Crow Indian Reservation, and upon such relocating such proceedings shall be had as are conformable to law and in accordance with the provisions of this act.

A. SCHOOL LANDS—LEASING.

Section 18 of this act permits the leasing of school lands reserved in Oklahoma for a period not exceeding three years for the benefit of the school fund of Oklahoma.

Shirley, In re, 35 L. D. 113, p. 114.

27 STAT. 470, FEBRUARY 20, 1893.

GAS AND OIL—NEW YORK.

AN ACT To ratify and confirm an agreement made between the Seneca Nation of Indians and William B. Barker.

Whereas, the Seneca Nation of Indians in council January 3, 1893, duly entered into an agreement with William B. Barker, whereby said nation leased to said Barker the oil springs, the Cattaraugus and the Allegany Reservations, situate in western New York, for the purpose of boring and testing said territory for gas and oil, on condition that if oil was found in paying quantities said nation

should receive one-eight part thereof, and if gas should be found in paying quantities said nation should receive $40 per annum for each gas well drilled and used, and in addition that each Seneca Indian family residing on either of said reservations should, if gas is found, have sufficient fuel for domestic use from any gas wells drilled on said territory free of charge, all of which is provided in said agreement, which was duly recorded in the Seneca Nation deed book, volume 5, page 341, January 4, 1893, at 3 o'clock post meridian of that day:

Therefore, be it enacted, etc., That the agreement above recited be, and the same hereby is, in all things ratified, accepted, and confirmed.

28 STAT. 286, pp. 305, 326, 332, 2 SUPP. R. S. 346, AUGUST 15, 1894.

MINERALS RESERVED.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1895.

Be it enacted, etc. * * *

To enable the President to cause, under the provisions of the act of February 8, 1887 (24 Stat. 388), entitled "An act to provide for the allotment of lands in severalty to Indians," such Indian reservations as in his judgment are advantageous for agricultural and grazing purposes to be surveyed, or resurveyed, for the purposes of said act, and to complete the allotment of the same, including the necessary clerical work incident thereto in the field and in the Office of Indian Affairs, and delivery of trust patents, so far as allotments shall have been selected under said act, $30,000: Provided, That whenever it shall be made to appear to the Secretary of the Interior that by reason of age, disability, or inability, any allottee of Indian Lands under this or former acts of Congress, can not personally and with benefit to himself, occupy or improve his allotment or any part thereof the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years for farming or grazing purposes, or 10 years for mining or business purposes: Provided further, That the surplus lands of any tribe may be leased for farming purposes by the council of such tribe under the same rules and regulations and for the same term of years as is now allowed in the case of leases for grazing purposes.

* * * * * * *

That for the purpose of carrying the provisions of this act into effect there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $140,600, which sum of money shall be paid to the Indians in the manner and form prescribed by articles 2 and 3 of the agreement: Provided, That none of the money or interest thereon which is by terms of said agreement to be paid to said Indians shall be applied to the payment of any judgment that has been or may hereafter be rendered under the provisions of the act of Congress approved March 3, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

The mineral lands shall be disposed of under the laws applicable thereto, and the balance of the land so ceded shall be disposed of until further provided by law under the town-site law and under the provisions of the homestead law: Provided, however, That each

settler, under and in accordance with the provisions of said homestead laws shall, at the time of making his original entry, pay the sum of 50 cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of $1 per acre, final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent.

* * * * * * *

That immediately after the issuance and receipt by the Indians of trust patents for the allotted lands, as provided for in said agreement, the lands so ceded, sold, relinquished, and conveyed to the United States shall be opened to settlement by proclamation of the President, and shall be subject to disposal only under the homestead, town site, stone and timber, and mining laws of the United States, excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of Idaho: Provided, That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States for the lands so taken by him, in addition to the fees provided by law, the sum of $3.75 per acre for agricultural lands, one-half of which shall be paid within three years from the date of original entry; and the sum of $5 per acre for stone, timber, and mineral lands, subject to the regulations prescribed by existing laws; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections 2304 and 2305 of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid. * * *

SEC. 21. That the remainder of the lands on said reservation shall, upon the approval of the allotments by the Secretary of the Interior, be immediately open to entry under the homestead and mineral laws of the United States: Provided, That no person shall be entitled to locate more than two claims, neither to exceed 10 acres, on any lands containing asphaltum, gilsonite, or like substances: Provided, That after three years actual and continuous residence upon agricultural lands from date of settlement the settler may, upon full payment of $1.50 per acre, receive patent for the tract entered. If not commuted at the end of three years the settler shall pay at the time of making final proof the sum of $1.50 per acre.

A. INDIAN LANDS.

1. ACT LIMITED TO SPECIFIC LANDS.
2. DISPOSAL OF MINERAL LANDS—EXCLUSIVENESS OF ACT.
3. RESERVATION OF MINERALS.
4. MINERAL LAWS NOT OPERATIVE WITHIN RESERVATION.
5. MINING CLAIMS LOCATED WITHIN RESERVATION—VALIDITY.

1. ACT LIMITED TO SPECIFIC LANDS.

This act has reference and is limited to certain specific lands in the Siletz Reservation and it provides no specific manner for their disposal, and the ceded lands in this reservation not subject to disposal under the mineral or town-site laws are to be disposed of under the provisions of the homestead laws.

White, In re, 30 L. D. 536, p. 537.

2. DISPOSAL OF MINERAL LANDS—EXCLUSIVENESS OF ACT.

This act with reference to the disposal of the mineral lands in conclusive on all the parties, and the modes of appropriation are exclusive of any other, and the subsequent act of June 4, 1897 (30 Stat. 36), applying to the public domain generally, does not apply to such lands as to the disposal of which specific provision has been made.

Bartlett, In re, 32 L. D. 374, p. 376.

3. RESERVATION OF MINERALS.

The act of June 7, 1897 (30 Stat. 62, p. 87), did not repeal this act and no formal repeal was necessary to enable Congress to reserve lands containing gilsonite, asphaltum, elaterite, or other like substances, as that act never became operative upon these excepted lands, and the two acts are in pari materia, as relating to a future disposition of lands containing gilsonite, asphaltum, elaterite, or other like substances, and the latest expression is to the effect that the title to lands containing gilsonite, asphaltum, elaterite, or other like substances, is reserved to the United States.

Meeks, In re, 29 L. D. 456, p. 459.

4. MINERAL LAWS NOT OPERATIVE WITHIN RESERVATION.

After the happening of the contingency provided for in section 21 neither the homestead nor the mineral laws should be operative within the boundaries of this reservation, and then no person could locate more than two claims, neither to exceed ten acres, on any lands containing asphaltum, gilsonite, or other like substances.

Meeks, In re, 29 L. D. 456, p. 458.

5. MINING CLAIMS LOCATED WITHIN RESERVATION—VALIDITY.

The discovery and location of a mineral vein or deposit bearing albertite, gilsonite, elaterite, and asphaltum, within the boundaries of the Uncompahgre Indian Reservation gives the locator no right or title to such deposits, as such lands are excepted from the operation of the mining laws by the Executive order creating such reservation.

Meeks, In re, 29 L. D. 456, pp. 457, 460.

28 STAT. 677, FEBRUARY 20, 1895.

COAL LANDS WITHDRAWN.

AN ACT To disapprove the treaty heretofore made with the Southern Ute Indians to be removed to the Territory of Utah, and providing for settling them down in severalty where they may so elect and are qualified, and to settle all those not electing to take lands in severalty on the west 40 miles of present reservation and in portions of New Mexico, and for other purposes, and to carry out the provisions of the treaty with said Indians June 15, 1880.

Be it enacted, etc., That the agreement made by (certain named persons) commissioners on the part of the United States with the Southern Ute Indians of Colorado, bearing date November 13, 1888 (25 Stat. 133), be, and the same is hereby, annulled, and the treaty made with said Indians June 15, 1880 (21 Stat. 199), be carried out as herein provided, and as further provided by general law for settling Indians in severalty.

SEC. 2. That within six months after the passage of this act the Secretary of the Interior shall cause allotment of land, in severalty, to be made to such of the Southern Ute Indians in Colorado as may elect and be considered by him qualified to take the same out of the agricultural lands embraced in their present reservation in Colorado,

such allotments to be made in accordance with the provisions of the act of Congress approved June 15 1880 (21 Stat. 199), entitled "An act to accept and ratify the agreement submitted by the Confederated Bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriations for carrying out the same," and the amendments thereto as far as applicable hereto, and the treaties heretofore made with said Indians: Provided, That Indians taking allotments as herein provided shall retain their interest in all tribal property.

* * * * * * *

SEC. 4. That at the expiration of six months from the passage of this act the President of the United States shall issue his proclamation declaring the lands embraced within the present reservation of said Indians, except such portions as may have been allotted or reserved under the provisions of the preceding sections of this act, open to occupancy and settlement, and thereupon said lands shall be and become a part of the public domain of the United States, and shall be subject to entry under the desert, homestead, and town-site laws and laws governing the disposal of coal, mineral, stone, and timber lands; but no homestead settler shall receive a title to any portion of such lands at less than $1.25 per acre, and shall be required to make a cash payment of 50 cents per acre at the time filing is made upon any of said lands: * * *

A. INDIAN LANDS—COAL LANDS WITHDRAWN.

The fact that this act declares that the Southern Ute lands were open to disposition and made such lands a part of the public domain of the United States does not prevent the operation of the provisions of the act of June 22, 1910 (36 Stat. 583), as to the coal lands or the lands withdrawn or classified as coal within the Southern Ute Indian Reservation.

Glassner, In re, 39 L. D. 462, p. 463.

28 STAT. 876, pp. 894, 899, 900; 2 SUPP. 427; MARCH 2, 1895.

CESSION OF MINERAL LANDS.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1896.

Be it enacted, etc. * * *

The Secretary of the Interior is authorized to negotiate with the Indians on the San Carlos Reservation, Ariz., through an inspector, for the cession or relinquishment to the United States of the lands embracing the coal fields, and that any agreement made shall be submitted to Congress for action. * * *

The said Wichita and affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title, and interest of every kind and character in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit: (description follows) * * *

* * * * * * *

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

* * * * * * *

Provided, That whenever it shall be made to appear to the Secretary of the Interior that by reason of age, disability, or inability any allottee of Indian lands under this or former acts of Congress can not personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding 5 years for farming or grazing purposes, or 10 years for mining or business purposes.

* * * * * * *

That the allotments of land made to the Quapaw Indians in the Indian Territory, in pursuance of an act of the Quapaw National Council, approved March 23, 1893, be, and the same are hereby, ratified and confirmed subject to revision, correction, and approval by the Secretary of the Interior: Provided, however, That any allottee who may be dissatisfied with his allotment shall have all the rights to contest the same provided for in said act of the Quapaw National Council subject to revision, correction, and approval by the Secretary of the Interior. And the Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith: Provided, That said allotments shall be inalienable for a period of 25 years from and after the date of said patents; * * *

A. MINING LAWS EXTENDED TO LANDS CEDED BY INDIANS.
B. INDIAN ALLOTTEES.

A. MINING LAWS EXTENDED TO LANDS CEDED BY INDIANS.

By this act the mining laws of the United States are expressly extended over the lands ceded under the agreement contained in the act, and sections 16 and 36, as well as sections 13 and 33, reserved therein for school and other purposes, are made subject to the operation of the mining laws in the same manner and with like effect as are sections of lands similarly reserved elsewhere and not granted, as to which the mining laws are applicable.

Gypsite Placer Min. Claim, In re, 34 L. D. 54, p. 55.

B. INDIAN ALLOTTEES.

1. ALIENATION RESTRICTED—OIL AND GAS LEASES.

This act restricted the members of the qualified Indian tribes in the alienation of their lands for a period of 25 years, and the granting of oil, gas, or mining leases is an alienation within the meaning of this act.

Tidwell v. Dobson, 37 Okla. 180, p. 181.
Eldred v. Okmulgee Loan & Trust Co., 22 Okla. 742.
See Wah-tah-noh-zhe v. Moore, 36 Okla. 631.

The assignment of royalties due under a mining or an oil and gas lease executed by a Quawpaw Indian on his tribal allotment is not an alienation of such real estate or any part thereof in violation of this act.

Wah-tah-noh-zhe v. Moore, 36 Okla. 631, p. 639.
Tidwell v. Dobson, 37 Okla. 180, p. 182.
See United States v. Abrams, 181 Fed. 897.
United States v. Noble, 197 Fed. 292.

The restrictions placed upon the alienation of lands by the Quawpaw Indians under this act were modified by the act of June 7, 1897 (30 Stat. 72), and thereafter competent Quawpaw allottees could lease their lands for a term not exceeding 10 years for mining or business purposes.

Tidwell v. Dobson, 33 Okla. 180, p. 181.
See Wat-tah-noh-zhe v. Moore, 36 Okla. 631; 129 Pac. 877.

30 STAT. 62, pp. 85, 87, 2 SUPP. R. S. 629, p. 631, JUNE 7, 1897.

LEASES FOR MINING.

AN ACT Making appropriations for expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1898, and for other purposes.

Be it enacted, etc., * * *

To enable the President to cause, under the provisions of the act of February 8, 1887 (24 Stat. 388), entitled "An act to provide for the allotment of lands in severalty to Indians," such Indian reservations as in his judgment are advantageous for agricultural and grazing purposes to be surveyed or resurveyed, for the purposes of said act, and to complete the allotment of the same, including the necessary clerical work incident thereto in the field and in the office of Indian Affairs, and delivery of trust patents, so far as allotments shall have been selected under said act, $30,000: Provided, That hereafter whenever it shall be made to appear to the Secretary of the Interior that by reason of age or disability any allottee of Indian lands under this or former acts of Congress can not personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased, in the discretion of the Secretary, upon such terms, regulations, and conditions as shall be prescribed by him, for a term not exceeding 3 years for farming or grazing purposes, or 5 years for mining or business purposes.

* * * * * * *

The Secretary of the Interior is hereby directed to allot agricultural lands in severalty to the Uncompahgre Ute Indians now located upon or belonging to the Uncompahgre Indian Reservation in the State of Utah, said allotments to be upon the Uncompahgre and Uintah reservations or elsewhere in said State. And all the lands of said Uncompahgre Reservation not theretofore allotted in severalty to said Uncompahgre Utes shall, on and after the first day of April, 1898, be open for location and entry under all the land laws of the United States; excepting, however, therefrom all lands containing gilsonite, asphalt, elaterite, or other like substances.

And the title to all of the said lands containing gilsonite, asphaltum, elaterite, or other like substances is reserved to the United States.

* * * * * * *

SEC. 10. That section 8 of an act making appropriations for the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1897 (29 Stat. 321, p. 353), and for other purposes, be amended by striking out from the last paragraph of said section the following proviso, to wit: "Provided, however, That any person who, in good faith, prior to the passage of this act, had discovered and opened or located a mine of coal or other mineral shall have a preference right of purchase for 90 days from and after the official filing in the local land office of the approved plat of survey provided for by this section."

A. INDIAN LANDS—LEASE FOR MINING PURPOSES.

1. LIMITATION ON POWER OF INDIANS TO LEASE.
2. INDIANS MAY LEASE LANDS FOR MINING SUBJECT TO APPROVAL.
3. OVERLAPPING LEASES—VALIDITY.
4. ASSIGNMENT OF ROYALTIES.
5. LEASE FOR MINING PURPOSES—MINERALS EXCEPTED.
6. RIGHT OF GOVERNMENT TO SUE TO CANCEL LEASE.
7. FAILURE TO ACKNOWLEDGE LEASE—EFFECT.

1. LIMITATION ON POWER OF INDIANS TO LEASE.

This act in making an Indian allottee a citizen and vesting him with power to lease for a particular purpose and not beyond a stated term for such consideration as may be agreed upon between him and his lessee, was intended by Congress that in all other respects, save as to the purposes, which must be either grazing, farming, or mining, the allottee is clothed with as full and complete power to lease his land as any white man; and if he is imposed upon by the lessee as to any such other feature in such a way as will give a white citizen a right of action for legal redress, then he and not the Government must sue.

United States v. Abrams, 181 Fed. 847, p. 852.

2. INDIANS MAY LEASE LANDS FOR MINING SUBJECT TO APPROVAL.

This act modified the restrictions placed upon Quawpaw Indians under the act of March 2, 1895 (28 Stat. 907), so as to permit members of the tribe to lease their allotted lands for terms not exceeding three years for farming and grazing purposes, and not exceeding 10 years for mining or business purposes.

Wah-tah-noh-zhe v. Moore, 36 Okla. 631.
Tidwell v. Dobson, 37 Okla. 180, p. 181.

This act provides that leases for mining purposes shall not exceed 10 years, and a lease for a longer term is invalid.

United States v. Abrams, 181 Fed. 847, p. 851.

The authority given by this act to the tribes of Indians named to lease their lands for farming or grazing purposes does not revoke the existing statutory authority requiring leases for mining purposes to be approved by the Secretary of the Interior.

Sisseton, etc., Indian Lands, In re, 25 L. D. 364.

3. OVERLAPPING LEASES—VALIDITY.

This act does not prevent what is styled overlapping leases for mining purposes, and overlapping leases for 10 years are not void, though the latter leases did not in fact cancel the earlier ones.

United States v. Noble, 197 Fed. 292, p. 293.

An Indian allottee may while he has a valid outstanding lease under this act make another lease to another lessee which does not exceed the lawful term so that the second lessee may enjoin that portion of his term beyond the termination of the first lease.

Unites States v. Abrams, 181 Fed. 847, p. 853.

4. ASSIGNMENT OF ROYALTIES.

An Indian allottee making a valid lease for mining purposes, providing for the payment of stipulated royalties for the maximum period permitted by the statute, may make a valid assignment of such royalties.

United States V. Abrams, 181 Fed. 847, p. 856.

Royalties due an Indian allottee under a mining lease can be legally assigned.

Tidwell v. Dobson, 37 Okla. 180, p. 182.
Wah-tah-noh-zhe v. Moore, 36 Okla. 631.
See United States v. Noble, 197 Fed. 292.

5. LEASE FOR MINING PURPOSES—MINERALS EXCEPTED.

This act recognizes the validity of the reservation and also expressly excepts all lands containing gilsonite, asphaltum, elaterite, or other like substances, and provides that the title to all such lands is reserved to the United States.

Meeks, In re, 29 L. D. 456, p. 458.

6. RIGHT OF GOVERNMENT TO SUE TO CANCEL LEASE.

Where Congress has extended the right to lease Indian lands for mining purposes with no conditions except that for a particular purpose the term shall not exceed a stated number of years, and where a lease is expressly for a purpose contemplated in the act and does not exceed the term permitted, then the Government of the United States can not maintain an action in its own name to cancel such a lease.

United States v. Abrams, 181 Fed. 847, p. 852.

If an Indian allottee has power to make a lease for the purpose and within the period specified by law, he could agree with the lessee that it might be canceled and annulled, and the fact that he has made a lease for the term of ten years ties his hands and he is powerless to enter into an agreement modifying or canceling his lease during its term.

United States v. Abrams, 181 Fed. 847, p. 853.

If any contract or lease made by an Indian allottee is in violation of the conditions or limitations imposed by acts of Congress, under which the allottee has taken his allotment, then the United States has such an interest as entitles it to maintain an action to cancel.

United States v. Abrams, 181 Fed. 847, p. 849.
See United States v. Allen, 179 Fed. 13.

7. FAILURE TO ACKNOWLEDGE LEASE—EFFECT.

The fact that an Indian lease of land for mining purposes was not acknowledged does not affect its validity as between the parties.

United States v. Noble, 197 Fed. 292, p. 295.

30 STAT. 495, p. 497, 2 SUPP. R. S. 814, p. 816, JUNE 28, 1898.

LEASING BY ALLOTTEES.

AN ACT For the protection of the pepole of the Indian Territory.

Be it enacted, etc., * * *.

SEC. 11. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the commission

heretofore appointed under acts of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits; and all town sites shall also be reserved to the several tribes, and shall be set apart by the commission heretofore mentioned as incapable of allotment. * * *

SEC. 13. That the Secretary of the Interior is hereby authorized and directed from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt, and other minerals in said territory, and all such leases shall be made by the Secretary of the Interior; and any lease for any such minerals otherwise made shall be absolutely void. No lease shall be made or renewed for a longer period than 15 years, nor cover the mineral in more than 640 acres of land, which shall conform as nearly as possible to the surveys. Lessees shall pay on each oil, coal, asphalt, or other mineral claim at the rate of $100 per annum, in advance, for the first and second years; $200 per annum, in advance, for the third and fourth years, and $500, in advance, for each succeeding year thereafter, as advanced royalty on the mine or claim on which they are made. All such payments shall be a credit on royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all lessees must pay said annual advanced payments on each claim, whether developed or undeveloped; and should any lessee neglect or refuse to pay such advanced annual royalty for the period of 60 days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance shall then become and be the money and property of the tribe. Where any oil, coal, asphalt, or other mineral is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land, by the lessee or party operating the same, before operations begin: Provided, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interests shall continue unimpaired hereby, and shall be assured to such holders or owners by leases from the Secretary of the Interior for the term not exceeding 15 years, but subject to payment of advanced royalties as herein provided, when such leases are not operative, to the rate of royalty on coal mined, and the rules and regulations to be prescribed by the Secretary of the Interior, and preference shall be given to such parties in renewals of such leases: And provided further, That when, under the customs and laws heretofore existing and prevailing in the Indian Territory, leases have been made of different groups or parcels of oil, coal, asphalt, or other mineral deposits, and possession has been taken thereunder

and improvements made for the development of such oil, coal, asphalt, or other mineral deposits, by lessees or their assigns, which have resulted in the production of oil, coal, asphalt, or other mineral in commercial quantities by such lessees or their assigns, then such parties in possession shall be given preference in the making of new leases, in compliance with the directions of the Secretary of the Interior; and in making new leases due consideration shall be made for the improvements of such lessees, and in all cases of the leasing or renewal of leases of oil, coal, asphalt, and other mineral deposits preference shall be given to parties in possession who have made improvements. The rate of royalty to be paid by all lessees shall be fixed by the Secretary of the Interior.

SEC. 15. * * * The person authorized by the tribe or tribes may execute or deliver to any such purchaser, without expense to him, a deed conveying to him the title to such lands or town lots; and thereafter the purchase money shall become the property of the tribe; and all such money shall, when title to all the lots in the town belonging to any tribe have been thus perfected, be paid per capita to the members of the tribe: Provided, however, That in those town sites designated and laid out under the provisions of this act where coal leases are now being operated and coal is being mined there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines and a sufficient amount for all buildings and machinery for mining purposes: And provided further, That when the lessees shall cease to operate said mines, then, and in that event, the lots of land so reserved shall be disposed of as provided for in this act.

SEC. 16. That it shall be unlawful for any person, after the passage of this act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of anyone else, any royalty on oil, coal, asphalt, or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to any one of said tribes or nations in said territory, or for anyone to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong: * * *

SEC. 29. * * * And all coal and asphalt in or under the lands allotted and reserved from allotment shall be reserved for the sole use of the members of the Choctaw and Chickasaw Tribes, exclusive of freedmen: Provided, That where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same, before operations begin.

* * * * * * *

That as soon as practicable, after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and the seals of the respective nations, and deliver to each of the said allottees patents conveying to him all the right, title, and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land. Said patents shall be framed in accordance with the provisions of this agreement, * * * and as a relinquishment of all his right, title, and interest in and to any and all parts thereof, except the land embraced in said patents, except also his interest in the proceeds of all lands, coal, and asphalt herein excepted from allotment.

* * * * * * *

It is agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw Nations shall remain and be the common property of the members of the Choctaw and Chickasaw Tribes (freedmen excepted), so that each and every member shall have an equal and undivided interest in the whole; and no patent provided for in this agreement shall convey any title thereto. The revenues from coal and asphalt, or so much as shall be necessary, shall be used for the education of the children of Indian blood of the members of said tribes. Such coal and asphalt mines as are now in operation, and all others which may hereafter be leased and operated, shall be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years; after which the term of appointees shall be four years. * * *

All coal and asphalt mines in the two nations, whether now developed, or to be hereafter developed, shall be operated, and the royalties therefrom paid into the Treasury of the United States, and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

All contracts made by the national agents of the Choctow and Chickasaw Nations for operating coal and asphalt, with any person or corporation, which were, on April 23, 1897, being operated in good faith are hereby ratified and confirmed, and the lessees shall have the right to renew the same when they expire, subject to all the provisions of this act.

All agreements heretofore made by any person or corporation with any member or members of the Choctaw or Chickasaw Nations, the object of which was to obtain such member or members' permission to operate coal or asphalt, are hereby declared void: Provided, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interests shall continue unimpaired hereby and shall be assured by new leases from such trustees of coal or asphalt claims described therein, by application to the trustees within six months after the ratification of this agreement, subject, however, to payment of advance royalties herein provided for.

All leases under this agreement shall include the coal or asphaltum, or other mineral, as the case may be, in or under 960 acres, which shall be in a square as nearly as possible, and shall be for 30 years. The royalty on coal shall be 15 cents per ton of 2000 pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be 60 cents per ton, payable same as coal: Provided, That the Secretary of the Interior may reduce or advance royalties on coal and asphalt when he deems it for the best interests of the Choctaws and Chickasaws to do so. No royalties shall be paid except into the United States Treasury as herein provided.

All lessees shall pay on each coal or asphalt claim at the rate of $100 per annum, in advance, for the first and second years; $200 in advance for the third and fourth years; and $500 for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated, and its production is in excess of such guaranteed annual advance payments, and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped: Provided, however, That should any lessee neglect or refuse to pay such advanced annual royalty for the period of 60 days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctow and Chickasaw Nations.

In surface, the use of which is reserved to present coal operators, shall be included such lots in towns as are occupied by lessees' houses, either occupied by said lessees' employees, or as offices or warehouses: Provided, however, That in those town sites designated and laid out under the provision of this agreement where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the town-site board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes: And provided further, That when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw Tribes.

That whenever the members of the Choctaw and Chickasaw Tribes shall be required to pay taxes for the support of schools, then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct.

It is further agreed that the United States courts now existing, or that may hereafter be created, in the Indian Territory shall have exclusive jurisdiction of all controversies growing out of the titles, ownership, occupation, possession, or use of real estate, coal, and asphalt in the territory occupied by the Choctaw and Chickasaw Tribes; and of all persons charged with homicide, embezzlement, bribery, and embracery, breaches, or disturbances of the peace, and

carrying weapons, hereafter committed in the territory of said tribes, without reference to race or citizenship of the person or persons charged with such crime; and any citizen or officer of the Choctaw or Chickasaw Nations charged with such crime shall be tried, and, if convicted, punished as though he were a citizen or officer of the United States.

* * * * * * *

A. INDIAN LANDS—LEASING BY ALLOTTEES.

1. LEASING TO WHITE PERSONS RECOGNIZED.
2. STATUTE OPERATES PROSPECTIVELY ONLY.
3. MINERALS RESERVED TO TRIBES.
4. SECRETARY'S EXCLUSIVE POWER OVER MINERALS.
5. ROYALTIES UNLAWFUL UNLESS MADE OR PAID AS PROVIDED.
6. MINING LEASES.
   a. AUTHORIZED UNDER REGULATIONS.
   b. DILIGENCE IN DEVELOPMENT IMPLIED.
   c. ACREAGE AND TERM.

1. LEASING TO WHITE PERSONS RECOGNIZED.

These provisions presuppose the fact that it was very common for the Chickasaw Nation of Indians to make charters for mining coal and other minerals in the Indian Territory, to white persons, and the Chickasaw statute does not in terms forbid leasing mineral lands to white persons.

McBride v. Farrington, 131 Fed. 797, p. 802.

2. STATUTE OPERATES PROSPECTIVELY ONLY.

This act does not operate to deprive the lessors of coal mines in the Choctaw Nation of the royalties due them for coal mined under valid leases prior to the enactment of the statute.

Southwestern Coal Co. v. McBride, 185 U. S. 499, p. 502.

Section 16 is not retrospective in its operation upon royalties already earned, and does not in terms or by implication affect royalties due under existing leases, though it prohibits the making of such leases and prohibits the payment of royalties under existing leases which may be earned and accrue after the passage of the act.

Atoka Coal & Min. Co. v. Adams, 104 Fed. 472, p. 473.

The provisions of section 18 of this act do not operate retrospectively, but prospectively only.

Southwestern Coal Co. v. McBride, 185 U. S. 499, p. 503.
Southwestern Coal Co. v. McBride, 104 Fed. 473.

3. MINERALS RESERVED TO TRIBES.

The allotment of lands to individual members of the Cherokee Tribes of Indians, expressly reserves to each tribe all oil, coal, asphalt, and mineral deposits in the lands so allotted, and no such allotment shall carry or transfer title to any such oil, coal, asphalt, or minerals deposits.

Cherokee Nation v. Hitchcock, 187 U. S. 294, p. 302.

4. SECRETARY'S EXCLUSIVE POWER OVER MINERALS.

Section 13 of this act gives the Secretary of the Interior exclusive powers over the oil, coal, asphalt, and other minerals and authorizes him to make leases for such oil, coal, asphalt, or other minerals, under certain conditions.

Cherokee Nation v. Hitchcock, 187 U. S. 294, p. 303.

In an action by the Cherokee Nation against the Secretary of the Interior to enjoin him from making illegal leases of oil, coal, asphaltum, or other minerals, under the supposed authority of this section, the persons to whom such leases are made, or are proposed to be made, are not necessary parties to the bill.

Cherokee Nation v. Hitchcock, 187 U. S. 294, p. 300.

5. ROYALTIES UNLAWFUL UNLESS MADE OR PAID AS PROVIDED.

Section 16 of this act makes it unlawful for any person hereafter, except as provided, to claim, demand, or receive any royalty on oil, coal, asphalt, or other mineral belonging to any one of the tribes in the Indian Territory.

Cherokee Nation v. Hitchcock, 187 U. S. 294, p. 304.

By this section it is made unlawful for any person to pay royalties or rents on any mineral or timber lands to the Chickasaw Nation or its citizens except such payment be made pursuant to rules and regulations prescribed by the Secretary of the Interior.

McBride v. Farrington, 131 Fed. 797, p. 802.

6. MINING LEASES.

a. AUTHORIZED UNDER REGULATIONS.

Pursuant to the terms of this act, the Secretary of the Interior promulgated certain rules and regulations relative to coal and asphalt leases and the operation of mines thereunder, and fixing the royalties to be paid, and required the payment of advanced royalties.

United States v. McMurray, 181 Fed. 723, p. 726.

b. DILIGENCE IN DEVELOPMENT IMPLIED.

While a lease may make no provision as to the diligence the lessee shall exercise in development, yet it may be assumed that Congress in granting the authority to the mining trustees to make leases contemplated that one of the terms thereof should be the requirement of due diligence in development, and a lessee can not excuse an unconscionable delay by relying upon the fact that he had paid the advanced royalties provided by the act, and the question as to due diligence is to be determined by the courts.

United States v. McMurray, 181 Fed. 723, p. 728.

c. ACREAGE AND TERM.

Leases under this act shall each contain 960 acres in as nearly a square form as possible, and shall extend for a period of 30 years, and the royalty shall be 15 cents per ton, payable on a certain fixed date, and the lessee must pay $100 the first and second years, $200 for the third and fourth years, and $500 for each succeeding year, and these payments are to be credited upon the royalties subsequently due; and the Secretary of the Interior is not authorized to change or modify by rules and regulations any of the provisions of the act, except the royalties per ton, which he may change under stated conditions, and he can not arbitrarily determine by a regulation what shall constitute reasonable diligence in the development of the leased premises, and declare a lease forfeited for failure to develop the premises according to such arbitrary determination.

United States v. McMurray, 181 Fed. 723, pp. 728, 730.

31 STAT. 848, p. 861, MARCH 1, 1901.

COAL AND OIL RIGHTS.

AN ACT To ratify and confirm an agreement with the Cherokee Tribe of Indians.

Be it enacted, etc., * * *

SEC. 79. That nothing in this act contained shall be held or construed to change, alter, modify, or impair any existing coal or oil rights heretofore acquired by lease, location, development, or otherwise, or to ratify, confirm, recognize, or validate any such right.

32 STAT. 245, pp. 263, 266, MAY 27, 1902.

MINING LEASES PROTECTED.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1903, and for other purposes.

Be it enacted, etc., * * *

That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River Tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family 80 acres of agricultural land which can be irrigated and 40 acres of such land to each other member of said tribes, said allotments to be made prior to October 1, 1903, on which date all the unallotted lands within said reservation shall be restored to the public domain: Provided, That persons entering any of said land under the homestead law shall pay therefor at the rate of $1.25 per acre: And provided further, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to 30 days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed 640 acres of contiguous mineral land, except the Raven Mining Co., which may in lieu of its lease locate 100 mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians.

* * * * * * *

That the mineral lands only in the Spokane Indian Reservation, in the State of Washington, shall be subject to entry under the laws of the United States in relation to the entry of mineral lands: Provided, That lands allotted to the Indians or used by the Government for any purpose or by any school shall not be subject to entry under this provision.

A. INDIAN LANDS.

1. OPERATION OF ACT POSTPONED.
2. TIME FOR OPENING UNALLOTTED LANDS.
3. PREFERENTIAL RIGHTS TO LEASEHOLDERS.
4. RAVEN MINING CO.—TITLE TO MINING CLAIMS.

1. OPERATION OF ACT POSTPONED.

The two joint resolutions passed by Congress on May 27, 1902 (32 Stat. 744), postponing the operation of this act, had the effect of suspending a locator's right to locate mineral claims on such land where such location was made on the same date.

Gibson v. Anderson, 131 Fed. 39, p. 42.

2. TIME FOR OPENING UNALLOTTED LANDS.

The time of opening the unallotted lands in the Uintah Reservation, as provided for in this act, was extended by successive acts to the 1st of September, 1905, unless the President should determine that the same might be opened by an earlier date.

Raven Min. Co., In re, 34 L. D. 306, p. 307.
Raven Min. Co., In re, 35 L. D. 382, p. 385.

3. PREFERENTIAL RIGHTS TO LEASE HOLDERS.

As this act had granted preferential rights to locate mining claims not to exceed 640 acres of contiguous lands generally to those holding leases or permits to negotiate leases from the Indians as well as especial rights to the Raven Mining Co., it became necessary to identify and separate the mineral claims located under these privileges before the opening of the general body of the land by the President's proclamation.

Raven Min. Co., In re, 34 L. D. 306.
See Raven Min. Co., In re, 35 L. D. 382.

4. RAVEN MINING CO.—TITLE TO MINING CLAIMS.

This act made no further provision with regard to the completion of title to these 100 mining claims which the Raven Mining Co. was authorized to locate, and in the absence of such legislation title to these claims could be obtained only in the ordinary manner provided for by the mining laws for the completion of title to mining claims elsewhere upon the public domain, and in compliance with section 2325 R. S.

Raven Min. Co., In re, 34 L. D. 306, p. 308.

The right granted to Raven Mining Co. under this act to locate 100 mining claims of the character of mineral mentioned in its lease is not limited in its exercise to the lands formerly embraced within such lease.

Raven Min. Co., In re, 35 L. D. 382, pp. 384, 386.

The rights existing under the lease were terminated upon the definite location of the ground by the Raven Mining Co. in the form in which it applied for the issuance of a patent under the locations made.

Raven Min. Co., In re, 36 L. D. 190, p. 191.

32 STAT. 500, p. 504, JUNE 30, 1902.

LEASE.

AN ACT To ratify and confirm a supplemental agreement with the Creek Tribe of Indians, etc.

Be it enacted, etc., That the following supplemental agreement, submitted by certain commissioners of the Creek Tribe of Indians, as herein amended, is hereby ratified and confirmed on the part of the United States, and the same shall be of full force and effect if

ratified by the Creek tribal council on or before September 1, 1902, which said supplement agreement is as follows: * * *

SEC. 17. Section 37 of the agreement ratified by said act of March 1, 1901 (31 Stat. 871), is amended, and as so amended is reenacted to read as follows:

"Creek citizens may rent their allotments, for strictly nonmineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. * * *

A. INDIAN LANDS.

1. OIL AND GAS LEASE—EXECUTION AND EFFECT—RECORD.

A lease executed by an Indian for oil and gas creates an inchoate interest in the land which by the approval of the Secretary of the Interior becomes absolute without any further act of the parties and by the doctrine of relation the leasehold estate upon the approval of the lease has its beginning at the date of the execution and delivery of the instrument, but such a lease must as against an innocent purchaser of the land for value be recorded before it is approved by the Secretary of the Interior.

Shulthis v. MacDougal, 170 Fed. 539, p. 536.

A lease of Indian lands under this statute and prior to its amendment or repeal was known as a departmental lease made under the statute and the rules of the Land Department giving the lessee the right to explore for and extract oil and gas from the leased lands for a period of 15 years, and required the approval of the Secretary of the Interior to make it valid, and according to the rules of the Land Office it must be executed in quadruplicate, one copy for the Secretary of the Interior, another to be filed in the office of the Indian agent, and one copy each for the lessor and lessee, and it must be recorded within the proper registration district of the territory, though no extra copy was required for that purpose.

Shulthis v. McDougal, 170 Fed. 529, p. 536.
See Shulthis v. MacDougal, 162 Fed. 331.

An oil and gas lease of Indian lands is required to be recorded within the proper registration district and of which all persons must take notice, but a purchaser of oil and gas lands is not required to inquire for any such oil or gas lease at the Indian agency, though a copy of such lease is required to be deposited with the proper Indian agent, but this is purely for administrative purposes and does not constitute notice though a person by inquiry might ascertain the fact, but no information from an Indian agent, whether correct or not, will be controlling as against the record of such a lease at the proper registration office.

Shulthis v. McDougal, 170 Fed. 529, p. 537.

A purchaser of oil and gas land from an Indian is not chargeable with notice of a prior unrecorded oil and gas lease though he was informed by the grantor that he had signed an oil lease, but thought it worthless because the lessee afterwards returned and wanted him to sign new papers, which he refused to do, and where such purchaser thereupon required an abstract of the title and such abstract showed no such recorded lease.

Shulthis v. McDougal, 170 Fed. 529, p. 538.

32 STAT. 641, p. 642, JULY 1, 1902.

APPRAISEMENT—MINERALS—CHOCTAW AND CHICKASAW.

AN ACT To ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes.

Be it enacted, etc., * * *

9. All lands belonging to the Choctaw and Chickasaw tribes in the Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: Provided, That in determining such value consideration shall not be given to the location thereof, to any mineral deposits, or to any timber except such pine timber as may have been heretofore estimated by the Commission to the Five Civilized Tribes, and without reference to improvements which may be located thereon.

10. The appraisement as herein provided shall be made by the Commission to the Five Civilized Tribes, and the Choctaw and Chickasaw tribes shall each have a representative to be appointed by the respective executives to cooperate with the said commission. * * *

26. The following lands shall be reserved from the allotment of lands herein provided for: * * *

(d) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their coal or asphalt deposits, as hereinafter provided. And the lands selected by the Secretary of the Interior at and in the vicinity of Sulphur in the Chickasaw Nation, under the cession to the United States hereunder made by said tribes. * * *

56. At the expiration of two years after the final ratification of this agreement all deposits of coal and asphalt which are in lands within the limits of any town site established under the Atoka agreement, or the act of Congress of May 31, 1900, or this agreement, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided and which are not at the time of the final ratification of this agreement embraced in any then existing coal or asphalt lease, shall be sold at public auction for cash under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of coal and asphalt lands.

57. All coal and asphalt deposits which are within the limits of any town site so established, which are at the date of the final ratification of this agreement covered by any existing lease, shall, at the expiration of two years after the final ratification of this agreement, be sold at public auction under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as provided in the last preceding section. The coal or asphalt covered by each lease shall be separately sold. The purchaser shall take such coal or asphalt deposits subject to the existing lease, and shall by the purchase succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribe shall be retained by them.

58. Within six months after the final ratification of this agreement the Secretary of the Interior shall ascertain, so far as may be practicable, what lands are principally valuable because of their deposits of coal or asphalt, including therein all lands which at the time of the

final ratification of this agreement shall be covered by then existing coal or asphalt leases, and within that time he shall, by a written order, segregate and reserve from allotment all of said lands. Such segregation and reservation shall conform to the subdivisions of the Government survey as nearly as may be, and the total segregation and reservation shall not exceed 500,000 acres. No lands so reserved shall be allotted to any member or freedman, and the improvements of any member or freedman existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior. All coal and asphalt deposits, as well as other minerals which may be found in any lands not so segregated and reserved, shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

59. All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a town site, established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood. Either of said commissioners may, at any time, be removed by the President for good cause shown. Each of said commissioners shall be paid at the rate of $4,000 per annum, the Choctaw commissioner to be paid by the Choctaw Nation, the Chickasaw commissioner to be paid by the Chickasaw Nation, and the third commissioner to be paid by the United States. In the sale of coal and asphalt lands and coal and asphalt deposits hereunder, the commission shall have the right to reject any or all bids which it considers below the value of any such lands or deposits. The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the manner provided by law. The lands embraced within any coal or asphalt lease shall be separately sold, subject to such lease, and the purchaser shall succeed to all rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribes shall be retained by them. The lands so segregated and reserved, and not included within any existing coal or asphalt lease, shall be sold in tracts not exceeding in area a section under the Government survey.

60. Upon the recommendation of the chief executive of each of the two tribes, and where in the judgment of the President it is advantageous to the tribes so to do, the sale of any coal or asphalt lands which are herein directed to be sold may be made at any time after the expiration of six months from the final ratification of this agreement, without awaiting the expiration of the period of two years, as hereinbefore provided.

61. No lease of any coal or asphalt lands shall be made after the final ratification of this agreement, the provisions of the Atoka agreement to the contrary notwithstanding.

62. Where any lands so as aforesaid segregated and reserved on account of their coal or asphalt deposits are in this agreement specifically reserved from allotment for any other reason, the sale to be made hereunder shall be only of the coal and asphalt deposits contained therein, and in all other respects the other specified reservation of such lands herein provided for shall be fully respected.

63. The chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser of any coal or asphalt lands so sold, and to each purchaser of any coal or asphalt deposits so sold, an appropriate patent or instrument of conveyance, conveying to the purchaser the property sold.

32 STAT. 716, p. 726, sec. 72, JULY 1, 1902.

LEASING—CHEROKEE NATION.

AN ACT To provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, etc.

Be it enacted, etc., * * *

SEC. 72. Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.

* * * * * * *

A. INDIAN LANDS—LEASING ACT.

1. POWER OF SECRETARY AS TO OIL AND GAS LEASES.
2. LIMITATIONS ON POWER OF INDIAN ALLOTTEE TO LEASE.
3. TERM OF INDIAN LEASE WITH SECRETARY'S APPROVAL.
4. OIL AND GAS LEASE—NATURE AND EFFECT.
5. LEASE TO EXPLORE AS A LICENSE.
6. SUBLETTING OR TRANSFER OF LEASE PROHIBITED.
7. LEASE BY MINOR—VALIDITY—APPROVAL BY SECRETARY—EFFECT.
8. FRAUDULENT CONTRACT RELATING TO LEASE NOT ENFORCED.

1. POWER OF SECRETARY AS TO OIL AND GAS LEASES.

Under this statute the power of the Secretary of the Interior relating to Indian leases for oil and gas is not limited to the mere approval or disapproval of the lease, but he is authorized to make any such lease subject to any existing departmental regulation, and such regulation is binding alike on the lessor and lessee.

Dixon v. Owen (Okla.), 132 Pac. 351, p. 353.

A lease of Indian lands for five years or more for mineral purposes comes to the Secretary of the Interior for approval as a lease competently executed, and he may act on that presumption, and while he may properly inquire as to the validity of its execution or the competency of the lessor, and might decline to approve if advised of fatal defects, or of the incompetency of the lessor, but he is not required to investigate and decide judicially matters lying back of and not appearing upon the face of the instrument; and if he did this his decision would not be conclusive.

Jennings v. Wood, 192 Fed. 507, p. 508.

The approval of the Secretary contemplated by this section proceeds upon a consideration of the terms of the instrument offered and whether such terms are reasonable for the interests of the Indian and were intended as an additional safeguard for his protection; and a disapproval of the Secretary is merely a veto.

Jennings v. Wood, 192 Fed. 507, p. 508.

2. LIMITATIONS ON POWER OF INDIAN ALLOTTEE TO LEASE.

The limitation and authority of this act necessarily placed a restriction upon the power and authority of the Indian allottee to lease his lands for the purposes mentioned to just such terms as would meet the approval of the Secretary of the Interior, and all Indian allottees took their lands and held them with this limitation upon their power to contract.

Dixon v. Owen (Okla.), 132 Pac. 351, p. 353.

3. TERM OF INDIAN LEASE WITH SECRETARY'S APPROVAL.

Under this statute a Cherokee citizen may lease his allotment for oil and gas purposes for a period exceeding five years, subject to the approval of the Secretary of the Interior, and any lease made in violation of the statute is void.

Alameda Oil Co. v. Kelly, 35 Okla. 525.

This statute requires the approval of the Secretary of the Interior to an oil and gas lease made by an Indian allottee for a period exceeding five years, yet the act does not provide within what time the Secretary shall be required to make the approval.

Alameda Oil Co. v. Kelly, 35 Okla. 525.

Under this section leases for more than one year by Cherokee citizens for grazing and for a period longer than five years for agricultural purposes and for mining purposes can only be made with the approval of the Secretary of the Interior, and any such lease not so made and approved is absolutely void.

Jennings v. Wood, 192 Fed. 507, p. 508.

4. OIL AND GAS LEASE—NATURE AND EFFECT.

Oil and gas leases under this act, unlike a grant of coal in place, do not grant the oil and gas unless found and removed during the time, and under the regulations of the Secretary governing such leases only so much of the land may be used as is reasonably necessary for the work.

Barnsdall v. Owen, 200 Fed. 519, p. 521.

5. LEASE TO EXPLORE AS A LICENSE.

An agreement in the form of a lease for a limited term of years under this act, granting the right to explore for oil and gas and to retain that found and extracted, is of

a peculiar class, and the interest of the lessee resembles a license more than an estate in the land itself.

Barnsdall v. Owen, 200 Fed. 519, p. 521.
Dickey v. Coffeyville Vitrified Brick, etc., Co., 69 Kan. 106.
Kolachny v. Galbreath, 26 Okla. 772.
Frank Oil Co. v. Belleview Co., 29 Okla. 719.
O'Neil v. Sun Co. (Tex. Civ. App.), 123 S. W. 172.
Smith v. Root, 66 W. Va. 633.

6. SUBLETTING OR TRANSFER OF LEASE PROHIBITED.

Under the regulations adopted by the Secretary of the Interior, as authorized by this act, oil and gas leases by an Indian allottee can not be sublet, transferred, or assigned without the consent and approval of the Secretary, and an applicant for the approval of such a lease is required to state under oath that he is not directly or indirectly interested in leases of similar character embracing more than 4,800 acres.

Barnsdall v. Owen, 200 Fed. 519, p. 520.

A contract by which the lessee of an Indian oil and gas lease executed by authority of this act, by which the charge of the operations for oil and gas are given to a third person and by which such third person has the same privileges and is subjected to the same restrictions as were imposed upon the lessee by the lease, with the right to terminate the contract as to the lease after exploration, and requiring the operations to be carried on at the sole expense of such third person, subject to reimbursement from the proceeds of oil if found, such third person to have the benefit of any gas-producing land, excepted under the terms of the lease, the contracting parties to share equally in the net profits, is not a mere working agreement or employment of such third person for the development of the leased lands, but is a transfer of an interest in the lease, which is expressly prohibited by the regulations of the Secretary of the Interior.

Barnsdall v. Owen, 200 Fed. 519, p. 521.

A contract by which a lessee of an Indian oil and gas lease under this act parts with the management and control of the operations to another, and gives the latter a beneficial interest in the fruits of the lease, is within the regulations of the Secretary of the Interior against subletting, transferring, or assigning any such lease without the consent and approval of the Secretary.

Barnsdall v. Owen, 200 Fed. 519, p. 521.

7. LEASE BY MINOR—VALIDITY—APPROVAL BY SECRETARY—EFFECT.

A lease of land for five years or more for mineral purposes by a Cherokee citizen who was a minor and incompetent to execute such lease is not validated by the approval of the Secretary of the Interior, as provided for in this section; but the incompetency of the lessor and the validity of the lease must be determined as if no such approval was provided for.

Jennings v. Wood, 192 Fed. 507, p. 508.

The approval of the lease by the Secretary as contemplated by this section does not reach back and supply or confirm all the essential, legal prerequisites of a valid contract and is not a conclusive determination that the lessor, if a minor, was in fact an adult, or that he was sound mentally, or that he belonged to the class or his land was of the character covered by the statute, if in fact these conditions were actually wanting.

Jennings v. Wood, 192 U. S. 507, p. 508.

The approval of the Secretary of the Interior of a lease of Indian lands for five years for mineral purposes is not required where such lease was executed by a minor and approved by the proper local court under section 20 of the act of April 26, 1906 (34 Stat. 137).

Jennings v. Wood, 192 Fed. 507, p. 509.
See Morrison v. Burnette, 154 Fed. 617.

8. FRAUDULENT CONTRACT RELATING TO LEASE NOT ENFORCED.

A contract in relation to an oil and gas lease executed by an Indian allottee under this act, made for the sole purpose of deceiving a public officer in the performance of his duty, is contrary to public policy and void, and a court of equity will neither enforce such a contract nor aid either of the parties to regain his prior status.

Barnsdall v. Owen, 200 Fed. 519, p. 522.

33 STAT. 189, p. 208, APRIL 21, 1904.

COAL AND ASPHALT LEASES.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1905, and for other purposes.

Be it enacted, etc., * * *

And provided further, That the Secretary of the Interior is hereby granted authority to sell at public sale in tracts not exceeding 160 acres to any one purchaser, under rules and regulations to be made by the Secretary of the Interior, the residue of land in the Creek Nation belonging to the Creek Tribe of Indians, consisting of about 500,000 acres, and being the residue of lands left over after allotments of 160 acres to each of said tribe. And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restrictions is for the best interest of said allottee. * * *

That the Secretary of the Interior be, and he is hereby, authorized and directed, upon the sale of lands in Indian Territory covered by coal and asphalt leases, to sell such lands subject to the right of the lessee to use so much of the surface as may be needed for coke ovens, miners' houses, store and supply buildings, and such other structures as are generally used in the production and shipment of coal and coke. Lessees may use the tipples and under ground workings located on any lease in the production of coal and coke from adjoining leases, and are hereby authorized to surrender leased premises to the owner thereof on giving 60 days' notice in writing to such owner and paying all charges and royalties due to the date of surrender: Provided, however, That nothing herein contained shall release the lessee from the payment of the stipulated royalty so long

as such lessee remains in possession of any of the surface of the lands included in his lease for any purpose whatever: And provided, That any lessee may remove or dispose of any machinery, tools or equipment the lessee may have upon the leased lands.

* * * * * * *

All unleased lands which are by section 59 of an act entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes," approved July 1, 1902 (32 Stat. 654), directed to "be sold at public auction for cash," and all other unleased lands and deposits of like character in said nations segregated under any act of Congress, shall, instead, be sold under direction of the Secretary of the Interior in tracts not exceeding 960 acres to each person, after due advertisement, upon sealed proposals, under regulations to be prescribed by the Secretary of the Interior and approved by the President, with authority to reject any or all proposals: Provided, That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof.

All expenses, inclusive of necessary clerical help in the Department of the Interior, connected with and incident to such sale shall be paid from the funds of the Choctaw and Chickasaw Tribes on deposit in the Treasury of the United States: Provided, That all leased lands shall be withheld from sale until the further direction of Congress. * * *

That any private land over which an Indian reservation has been extended by Executive order, may be exchanged, at the discretion of the Secretary of the Interior and at the expense of the owner thereof and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value and situated in the same State or Territory.

A. ALIENATION BY INDIAN ALLOTTEES.

1. RESTRICTIONS ON ALIENATION BY ALLOTTEES REMOVED.
2. OIL LEASES SUBJECT TO SECRETARY'S APPROVAL.

1. RESTRICTIONS ON ALIENATION BY ALLOTTEES REMOVED.

This statute removed restrictions on the alienation of certain lands theretofore allotted to the members of the Five Civilized Tribes of Indians.

Neilson v. Alberty, 36 Okla. 490, p. 497.

2. OIL LEASES SUBJECT TO SECRETARY'S APPROVAL.

A valid oil lease of a homestead of an allottee of Indian lands can not be made without the approval of the Secretary of the Interior, as this is the express exception in this act.

Moore v. Sawyer, 167 Fed. 826, p. 837.

33 STAT. 544, APRIL 28, 1904.

COAL AND ASPHALT.

An ACT To authorize the Secretary of the Interior to add to the segregation of coal and asphalt lands in the Choctaw and Chickasaw Nations, Indian Territory, and for other purposes.

Be it enacted, etc., That the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment, and to cancel any filings or applications that may heretofore have been made with a view to allotting the following-described lands, situate in the Choctaw Nation, to wit: The north half of the south half of the southeast quarter, and the northeast quarter of the southeast quarter of the southwest quarter of section 9; the north half of the south half of the south half of section 10; the north half of the south half of the south half of section 11, and the north half of the south half of the southwest quarter of section 12, all in township 5 north, range 19 east, containing 250 acres, more or less; and the northwest quarter of the southwest quarter of section 8, township 5 north, range 19 east, and the southwest quarter of the northeast quarter of section 7, township 5 north, range 19 east, containing 80 acres, more or less.

SEC. 2. That the provisions of sections 56 to 63, inclusive, of the act of Congress approved July 1, 1902, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes, etc." (32 Stat. 653, p. 655), be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation, as contemplated by said sections 56 to 63, inclusive, of said above act approved July 1, 1902: Provided, That the Secretary of the Interior may, in his discretion, add said lands to and make them a part of the coal and asphalt mining leases now in effect, and to which said lands above described are contiguous, the lands in each case to be added to and made a part of the lease to which they are adjacent and which they join, Government subdivisions being followed as nearly as possible: Provided further, That the holder or holders of the lease or leases to which such lands shall be added, shall, before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land, by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior: And provided further, That said lands shall be sold as other leased coal and asphalt lands in the Choctaw and Chickasaw Nations, in the Indian Territory are sold.

SEC. 3. That the Choctaw, Oklahoma & Gulf Railroad Co. is hereby authorized and empowered to sublet, assign, transfer, and set over the leases which it now has upon coal lands in Choctaw Nation, Ind. T., or any of them. The assignees or sublessees of said Choctaw, Oklahoma & Gulf Railroad Co. shall file good and sufficient bonds for the faithful performance of the terms of the original leases, to be approved by the Secretary of the Interior.

33 STAT. 1062, p. 1061, MARCH 3, 1905.

OIL LEASES.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1906, and for other purposes.

Be it enacted, etc., * * *

For survey and subdivision of Indian reservations and of lands to be allotted to Indians, and to make allotments in severalty, to be expended by the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, $25,000. And the President is hereby authorized, in his discretion, to allot the lands of any tribes of Indians to the individual members thereof whenever, in his judgment, it is advantageous for such Indians that such allotments be made: Provided, That any allotments which may be made of the Osage Reservation in Oklahoma Territory shall be made subject to the terms and conditions of the lease herein authorized, the same being a renewal as to a part of the premises covered by certain lease dated March 16, 1896, given by the Osage Nation of Indians to Edwin B. Foster and approved by the Secretary of the Interior and now owned by the Indian Territory Illuminating Oil Co. under assignments approved by the Secretary of the Interior, which said lease and all subleases thereof duly executed on or before December 31, 1904, or executed after that date based upon contracts made prior thereto, and which have been or shall be approved by the Secretary of the Interior, to the extent of 680,000 acres in the aggregate, are hereby extended for the period of 10 years from the 16th day of March, 1906, with all the conditions of said original lease except that from and after the 16th day of March, 1906, the royalty to be paid on gas shall be $100 per annum on each gas well, instead of $50 as now provided in said lease, and except that the President of the United States shall determine the amount of royalty to be paid for oil. Said determination shall be evidenced by filing with the Secretary of the Interior on or before December 31, 1905, such determination; and the Secretary of the Interior shall immediately mail to the Indian Territory Illuminating Oil Co. and each sublessee a copy thereof.

* * * * * * *

That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the act of Congress of May 27, 1902, such portion of the lands within the Uintah Indian Reservation as he considers necessary, and he may also set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, and may confirm such rights to water thereon as have already accrued: Provided, That the proceeds from any timber on such addition as may with safety be sold prior to June 30, 1920, shall be paid to said Indians in accordance with the provisions of the act opening the reservation.

That the Raven Mining Co. shall, within 60 days from the passage of this act, file for record, in the office of the recorder of deeds of the

county in which its claims are located, a proper certificate of each location; and it shall also, within the same time, file in the office of the Secretary of the Interior, in the city of Washington, said description and a map showing the locations made by it on the Uintah Reservation, Utah, under the act of Congress of May 27, 1902 (32 Stat. 263); and thereupon the Secretary of the Interior shall forthwith cause said locations to be inspected and report made, and if found to contain the character of mineral to which said company is entitled by the act of Congress aforesaid and that each of said claims does not exceed the size of a regular mining claim, to wit, 600 by 1,500 feet, he shall issue a patent in fee to the Raven Mining Co. for each of said claims: Provided further, That the Florence Mining Co. entitled under the act of Congress approved May 27, 1902, to the preferential right to locate not to exceed 640 acres of contiguous mineral land in the Uintah Reservation, Utah, shall within 60 days from the passage of this act file in the office of recorder of deeds of the county in which its location is made a proper description of its claim, and it shall within the same time file in the office of the Secretary of the Interior said description and a map showing the location made by it on the Uintah Reservation, Utah, and thereupon the Secretary of the Interior shall forthwith cause said location to be inspected and report thereon made, and if found not to exceed 640 acres he shall issue a patent in fee to said company for the said land: And provided further, That the extension of time for opening the unallotted lands to public entry herein granted shall not extend the time to make locations to any person or company heretofore given a preferential right, but the Raven Mining Co. and the Florence Mining Co. pending the time for opening to public entry the Uintah Reservation shall have the right of ingress and egress to and from their respective properties over and through said reservation.

A. OSAGE INDIAN RESERVATION.
B. RAVEN MINING CO.'S LOCATIONS.
C. INDIAN LANDS—UINTAH RESERVATION, p. 1023.

A. OSAGE INDIAN RESERVATION.

1. FOSTER OIL LEASE EXTENDED.

This act extended the original lease of the Osage Nation to Edwin B. Foster for 10 years for the purpose of prospecting for, boring, or drilling wells for mining and producing petroleum and natural gas on all the land in the Osage Indian Reservation.

Barnsdall Oil Co. v. Leahy, 195 Fed. 731, p. 732.

B. RAVEN MINING CO.'S LOCATIONS.

1. COMPLIANCE WITH STATUTE.

By this act the Raven Mining Co. was required, within 60 days from the passage of the act, to file in the office of the recorder of deeds of the proper county a certificate of each location and should within the same time file in the office of the Secretry of the Interior such description and a map showing the location made by it under the act of May 27, 1902 (32 Stat. 245, p. 263).

Raven Min. Co., In re, 36 L. D. 190, p. 191.

Under this act the location of the Raven Mining Co. were directed to be made and they were made in the form of lode claims, and upon inspection it was found that they contained the characteristics of mineral mentioned in the company's lease and to which it was entitled under the act of May 27, 1902 (32 Stat. 245, p. 263), and the company was relieved by this act from compliance with many of the conditions prescribed in section 2325 R. S., such as making the formal proof required under the mining laws in the completion of title to mineral land, but did not relieve it from the payment at the rate of $5 per acre for the mineral lands located as such lode claims.

Raven Min. Co., In re, 34 L. D. 306, p. 309.
See Raven Min. Co., In re, 35 L. D. 382.

As required by this act, the Raven Mining Co. duly filed in the Land Department a map showing the location made by it on the Uintah Reservation under the act of May 27, 1902 (32 Stat. 245, p. 263).

Raven Min. Co., In re, 35 L. D. 382, p. 385.
See Raven Min. Co., In re, 34 L. D. 306.

C. INDIAN LANDS—UINTAH RESERVATION.

1. MINERAL LANDS PREVIOUSLY DISPOSED OF EXCEPTED.

In the proclamation issued (34 Stat. 319) under the provisions of this act there was excepted from the lands to be opened such mineral lands as might have been disposed of under existing laws.

Raven Min. Co., In re, 34 L. D. 306, p. 307.
See Raven Min. Co., In re, 35 L. D. 382.

34 STAT. 137, p. 141, APRIL 26, 1902.

SALE OF MINING LEASES—FIVE CIVILIZED TRIBES.

AN ACT To provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory.

Be it enacted, etc., * * *.

SEC. 12. That the Secretary of the Interior is authorized to sell, upon such terms and under such rules and regulations as he may prescribe, all lots in towns in the Choctaw and Chickasaw Nations reserved from appraisement and sale for use in connection with the operation of coal and asphalt mining leases or for the occupancy of miners actually engaged in working for lessees operating coal and asphalt mines, the proceeds arising from such sale to be deposited in the Treasury of the United States as are other funds of said tribes.

If the purchaser of any town lot sold under the provisions of law regarding the sale of town sites in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Nations fail for 60 days after approval hereof to pay the purchase price or any installment thereof then due, or shall fail for 30 days to pay the purchase price or any installment thereof falling due hereafter, he shall forfeit all rights under his purchase, together with all money paid thereunder, and the Secretary of the Interior may cause the lots upon which such forfeiture is made to be resold at public auction for cash, under such rules and regulations as he may prescribe. * * *

SEC. 13. That all coal and asphalt lands whether leased or unleased shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired or until such time as may be otherwise provided by law.

* * * * * * *

SEC. 16. * * * The Secretary of the Interior is hereby authorized to sell, whenever in his judgment it may be desirable, any of the unallotted land in the Choctaw and Chickasaw Nations, which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding 640 acres to any one person, for a fair and reasonable price, not less than the present appraised value. * * *

* * * * * * *

SEC. 19. That no full blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of 25 years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: Provided, however, That such full blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior. * * *

SEC. 20. That after the approval of this act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: Provided, That allotments of minors and incompetents may be rented or leased under order of the proper court. * * *

A. INDIAN LANDS—OIL LEASES.

1. RIGHT OF UNITED STATES TO SUE ON BOND SECURING LEASE.
2. PAYMENTS TO BE MADE TO INDIAN AGENT.
3. LEASE OF MINOR APPROVED BY COURT—EFFECT.

1. RIGHT OF UNITED STATES TO SUE ON BOND SECURING LEASE.

The United States can not maintain an action on a bond given to secure an oil and gas lease of Indian lands under section 19 and under the terms of the lease the lessee was given the privilege, without obligating himself to pay, of paying a certain stated sum in addition to the rents and royalties if he failed to drill a well within a stated time and where it reserved to the lessor the right to forfeit the lease on the lessee's failure to so drill.

United States v. Comet Oil & Gas Co., 187 Fed. 674, p. 679.

The United States may maintain an action on a bond given by a lessee to secure the payments of rents and royalties due on a lease of oil and gas lands of a full-blood Indian on breach of any of the conditions of such bond.

United States v. Comet Oil & Gas Co., 187 Fed. 674, p. 679.

2. PAYMENTS TO BE MADE TO INDIAN AGENT.

It is competent for the Secretary of the Interior under this statute to require a lessee of oil and gas lands from a full-blood Indian to make all payments for rent or

royalties to a United States Indian agent at a certain designated agency, and to require the lessee to secure such rents and royalties by a good and sufficient bond payable to the United States.

United States v. Comet Oil & Gas Co., 187 Fed. 674, p. 678.

3. LEASE OF MINOR APPROVED BY COURT—EFFECT.

Under section 20 the lease of an allotment of a minor made with the approval of the proper local court is not subject to the approval or disapproval of the Secretary of the Interior under section 72 of the act of July 1, 1902 (32 Stat. 716).

Jennings v. Wood, 192 Fed. 507, p. 509.

34 STAT. 325, p. 326, JUNE 21, 1906.

MINING LAWS EXTENDED—COAL LANDS.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907.

Be it enacted, etc., * * *

Provided further, That the general mining laws of the United States shall extend after the approval of this act to any of said lands and mineral entry may be made on any of said lands, but no such mineral selection shall be permitted upon any lands allotted in severalty to the Indians: Provided further, That all the coal or oil deposits in or under the lands on the said reservation shall be and remain the property of the United States, and no patent that may be issued under the provisions of this or any other act of Congress shall convey any title thereto:

* * * * * * *

That the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment, and to cancel any filings or applications that may heretofore have been made with a view to allotting, the following-described lands, situate in the Choctaw Nation, Indian Territory, to wit: The northwest quarter of section 12, in township 5 north, range 15 east, containing in the aggregate 160 acres, more or less. That the provisions of sections 56 to 63, inclusive, of the act of Congress approved July 1, 1902, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes, and for other purposes" (32 Stat. 653), be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation as contemplated by said sections 56 to 63, inclusive, of said above act approved July 1, 1902: Provided, That the Secretary of the Interior may, in his discretion, add to and make a part of the coal mining leases now in effect, and to which said lands are contiguous, the northwest quarter of section 12, in township 5 north, of range 15 east, Government subdivisions being followed as nearly as possible: Provided further, That the holder or holders of the lease or leases to which such lands shall be added shall, before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior.

34 STAT. 539, p. 542, JUNE 28, 1906.

OIL LANDS—OSAGE.

AN ACT For the division of the lands and funds of the Osage Indians in Oklahoma.

Be it enacted, etc., * * *

SEC. 2. Seventh. * * * And provided further, That nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of 25 years, and the royalty to be paid to said tribe as hereinafter provided: And provided further, That the oil, gas, coal, and other minerals upon said allotted lands, shall become the property of the individual owner of the said land at the expiration of said 25 years, unless otherwise provided for by act of Congress.

SEC. 3. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the 8th day of April, 1906; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: Provided, That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: And provided further, That no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior: Provided, however, That nothing herein contained shall be construed as affecting any valid existing lease or contract.

A. OSAGE INDIAN ALLOTMENTS.

1. ALLOTMENTS INALIENABLE FOR CERTAIN PERIOD.
2. MINERALS INALIENABLE.

1. ALLOTMENTS UNALIENABLE FOR CERTAIN PERIOD.

Under this statute all lands allotted to the members of the Osage Tribe of Indians were made inalienable for a period of 25 years from the date of selection.

Neilson v. Alberty, 36 Okla. 490, p. 493.

2. MINERALS INALIENABLE.

Under this act adult members of the Osage tribe to whom certificates of competency were issued by the Secretary of the Interior could sell and convey, or control and dispose of their surplus allotted lands, but could not sell the oil, gas, coal, or other mineral covered by such lands.

Neilson v. Alberty, 36 Okla. 490, p. 493.

Section 2 contains further inhibitions against the sale of oil, gas, coal, or other minerals within the lands owned by the allottees and reserved them to the use of the tribe for a period of 25 years, and all royalties on any such minerals are to be paid to the tribe.

Neilson v. Alberty, 36 Okla. 490, p. 493.

35 STAT. 312, MAY 27, 1908.

OIL, GAS, AND MINERAL.

AN ACT For the removal of the restrictions from part of the lands of allottees of the Five Civilized Tribes.

Be it enacted, etc. * * *

SEC. 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be released by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: * * *

SEC. 3. * * * That no oil, gas, or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this act, but the same shall be subject to the approval of the Secretary of the Interior as if this act had not been passed: Provided, That the owner or owners of any allotted land from which restrictions are removed by this act, or have been removed by previous acts of Congress, or by the Secretary of the Interior, or may hereafter be removed under and by authority of any act of Congress, shall have the power to cancel and annul any oil, gas, or mineral lease on said land whenever the owner or owners of said land and the owner or owners of the lease thereon agree in writing to terminate said lease and file with the Secretary of the Interior, or his designated agent, a true copy of the agreement in writing canceling said lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the county where the land is situate.

* * * * * * *

SEC. 14. That the provision of section 13 of the act of Congress approved April 26, 1906 (34 Stat., p. 137), shall not apply to town lots in townsites heretofore established, surveyed, platted, and appraised under the direction of the Secretary of the Interior, but nothing herein contained shall be construed to authorize the conveyance of any interest in the coal or asphalt underlying said lots.

A. FIVE CIVILIZED TRIBES.

1. POWER OF ALIENATION GRANTED.
2. LEASE AS METHOD OF ALIENATION.

1. POWER OF ALIENATION GRANTED.

This act removed restrictions from part of the lands of allottees of the Five Civilized Tribes of Indians and authorized the Secretary of the Interior to consent to lease or alienation of such lands.

Neilson v. Alberty, 36 Okla. 490, p. 498.

2. LEASE AS METHOD OF ALIENATION.

By the use of the term "alienation" in this act Congress intended to include the leasing of lands and intended to remove the restrictions from the leasing of oil lands of the Indian tribes mentioned, treating a lease as a species of alienation, and therefore the approval of the Secretary of the Interior is not essential to the validity of an oil lease of Indian lands except as to land comprising a homestead.

Moore v. Sawyer, 167 Fed. 826, p. 836.
See Eldred v. Okmulgee Loan & Trust Co., 22 Okla. 742.

35 STAT. 444, p. 446, MAY 29, 1908.

COAL AND ASPHALT IN TOWN SITES.

AN ACT To authorize the Secretary of the Interior to issue patents in fee to purchasers of Indian lands under any law now existing or hereafter enacted, and for other purposes.

Be it enacted, etc. * * *

SEC. 7. That in addition to the towns heretofore segregated, surveyed, and scheduled in accordance with law, the Secretary of the Interior be, and he is hereby, authorized to segregate and survey within that part of the territory of the Choctaw and Chickasaw Nation, State of Oklahoma, heretofore segregated as coal and asphalt lands, such other towns, parts of towns, or town lots, as are now in existence, or which he may deem it desirable to establish. He shall cause the surface of the lots in such towns or parts of towns to be appraised, scheduled, and sold at the rates, on the terms, and with the same character of estate as is provided in section 29 of the act of Congress approved June 28, 1898 (30 Stat. 495), under regulations to be prescribed by him. That the provisions of section 13 of the act of Congress approved April 26, 1906 (34 Stat. 137), shall not apply to town lots appraised and sold as provided herein. That all expenses incurred in surveying, platting, and selling the lots in any town or parts of towns shall be paid from proceeds of the sale of town lots of the nation in which such town is situate.

35 STAT. 778, MARCH 3, 1909.

OIL, GAS, AND MINERALS—OSAGE.

AN ACT Authorizing the Secretary of the Interior to sell surplus lands of the Kaw or Kansas and Osage tribes of Indians in Oklahoma.

Be it enacted, etc., That the Secretary of the Interior be, and hereby is, authorized and empowered, upon application to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw or Kansas and Osage tribes of Indians in Oklahoma: Provided, That the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals.

35 STAT. 781, p. 783, MARCH 3, 1909.

LEASE OF MINERAL LANDS—OSAGE.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1910.

Be it enacted, etc. * * *

That all lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians

in Oklahoma, made by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect.

* * * * * * *

The town-lot payments in default shall not work forfeiture if payment, with 10 per cent interest from date of such default, is made before December 1, 1909. All rights to acquire land for allotment by Choctaw and Chickasaw freedmen shall cease December 1, 1910. The surface only of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nation shall be subject to condemnation under the laws of the State of Oklahoma for State penal institutions, county and municipal purposes and for sewers and water systems: Provided, That the title to the surface of any lands so condemned shall revert to the Choctaw and Chickasaw Nation upon its ceasing to be used for the purpose for which it was condemned and the tribal relation is hereby continued for such purpose and no title to any mineral rights in said lands so condemned shall be acquired hereunder.

36 STAT. 455, p. 455, JUNE 1, 1910.

CLASSIFICATION AND DISPOSAL—FORT BERTHOLD RESERVATION.

AN ACT To authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed to cause the unsurveyed part of the Fort Berthold Indian Reservation, in the State of North Dakota, to be surveyed, and to sell and dispose of, as hereinafter provided, all the surplus unallotted and unreserved lands within that portion of said reservation lying and being east and north of the Missouri River, and he shall cause an examination to be made of said lands by the Geological Survey; and if there be found any lands bearing coal or other mineral, the Secretary of the Interior is hereby authorized to reserve them from allotment or other disposition until Congress shall provide for their disposal: Provided, That any Indians to whom allotments may have been made within the area described herein may, in case they elect to do so before said lands are offered for sale, relinquish the same and select allotments in lieu thereof within the area in which the additional allotments hereinafter provided for are to be made.

* * * * * * *

SEC. 7. That the President of the United States shall appoint a commission, consisting of three persons, to inspect, classify, appraise, and value all of the lands described in section 1 of this act that shall not have been allotted in severalty to said Indians or granted or reserved by the terms of this act. * * * The said commissioners shall then proceed to personally inspect and classify and appraise, in 160-acre tracts, all of the remaining lands described in section 1 of this act, except sections 16 and sections 36. In making such classification and appraisement said lands shall be divided into the following

classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timberland; fifth, mineral land, if any, but the mineral and timberlands shall not be appraised. * * *

SEC. 8. That when said commissioners shall have completed the classification and appraisement of all of said lands, and the same shall have been approved by the Secretary of the Interior, the lands shall be disposed of under the provisions of the homestead, mineral, and town-site laws of the United States, except as hereinafter otherwise provided and excepting sections 16 and 36 of each township, which sections are hereby granted to the State of North Dakota for school purposes; and in case either of said sections or parts thereof should be lost to the State by reason of the allotment thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the area described in section 1 of this act, to select other unoccupied, unreserved, nonmineral lands, which selections must be made at least 30 days prior to the date fixed by the President's proclamation opening the surplus lands to settlement. * * *

38 STAT. 681, AUGUST 3, 1914 (PUBLIC NO. 162, 63D CONGRESS).

COAL DEPOSITS—FORT BERTHOLD RESERVATION.

AN ACT To provide for the disposal of certain lands in the Fort Berthold Indian Reservation, North Dakota.

Be it enacted, That the lands in the Fort Berthold Indian Reservation, North Dakota, which on account of their containing coal were reserved from allotment and other disposition under the act of June 1, 1910, entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect" (36 Stat., 455), shall be subject to disposal under the provisions of said act: Provided, That patents issued for such lands shall contain a reservation to the United States of any coal that such lands may contain, to be held in trust for the Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation, but any entryman shall have the right at any time before making final proof of his entry, or at the time of making such final proof, to a hearing for the purpose of disproving the classification as coal land of the land embraced in his entry, and if such land is shown not to be coal land a patent without reservation shall issue.

SEC. 2. That the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, and the proceeds arising from the disposal of such coal deposits or from the leasing or working thereof shall be deposited in the Treasury of the United States and shall be applied in the same manner as the proceeds derived from the disposition of the lands embraced in the Fort Berthold Indian Reservation. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands selected, entered, or patented, as provided by this act, for the

purpose of prospecting for coal thereon, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That the entryman or the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

SEC. 3. That the President of the United States shall appoint a commission consisting of three persons to inspect, classify, appraise, and value all of the lands described in section one of this act that shall not have been allotted in severalty to said Indians, said commission to be constituted as follows: One of the commissioners shall be a person holding tribal relations with said Indians, one a representative of the Interior Department, and one a resident citizen of the State of North Dakota. That within 20 days after their appointment said commissioners shall meet and organize by the election of one of their number as chairman. The said commissioners shall then proceed to personally inspect and classify and appraise, in 160-acre tracts, all of the remaining lands described in section one of this act except section 16 and section 36 under such rules and regulations as the Secretary of the Interior may prescribe. In making such classification and appraisement said lands shall, without regard to the coal they may contain, be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land; fourth, timberland. That said commissioners shall be paid a salary of not to exceed $10 per day each while actually employed in the inspection and classification of said lands and necessary expenses, exclusive of subsistence, to be approved by the Secretary of the Interior, such inspection and classification to be completed within six months from the date of the organization of said commission.

SEC. 4. That for the purpose of carrying into effect the provisions of this act the sum of $10,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated: Provided, That the said appropriation shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to the Indians of Fort Berthold Indian Reservation, North Dakota.

37 STAT. 631, APRIL 3, 1912.

COAL DEPOSITS RESERVED—FORT BERTHOLD RESERVATION.

JOINT RESOLUTION To authorize allotments to Indians of the Fort Berthold Indian Reservation, N. Dak., of lands valuable for coal.

Resolved, etc., That allotments to the Indians of the Fort Berthold Indian Reservation, in the State of North Dakota, authorized

by section 2 of an act entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," approved June 1, 1910 (36 Stat. 455), may be made of lands classified as coal lands or valuable for coal, with a reservation, however, in any patent which may issue upon any such allotment, of the coal deposits in the lands allotted, and of the right to prospect for, mine, and remove the same: Provided, That when such deposits are by Congress opened for disposition, any qualified coal claimant may enter upon these allotted lands for the purpose of prospecting for coal only after the approval by the Secretary of the Interior of a bond or undertaking given by such prospect or as security for the payment of all damages occasioned by reason of such prospecting.

37 STAT. 67, FEBRUARY 19, 1912.

COAL AND ASPHALTUM—SALE OF SURFACE.

AN ACT To provide for the sale of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations.

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to sell at not less than the appraised price, to be fixed as hereinafter provided, the surface, leased and unleased, of the lands of the Choctaw and Chickasaw Nations in Oklahoma segregated and reserved by order of the Secretary of the Interior dated March 24, 1903, authorized by the act approved July 1, 1902. The surface herein referred to shall include the entire estate save the coal and asphalt reserved. Before offering such surface for sale the Secretary of the Interior, under such regulations as he may prescribe, shall cause the same to be classified and appraised by three appraisers, to be appointed by the President, at a compensation to be fixed by him, not to exceed for salary and expenses for each appraiser the sum of $15 per day for the time actually engaged in making such classification and appraisement. The classification and appraisement of the surface shall be by tracts, according to the Government survey of said lands, except that lands which are especially valuable by reason of proximity to towns or cities may, in the discretion of the Secretary of the Interior, be subdivided into lots or tracts containing not less than 1 acre. In appraising said surface the value of any improvements thereon belonging to the Choctaw and Chickasaw Nations, except such improvements as have been placed on coal or asphalt lands leased for mining purposes, shall be taken into consideration. The surface shall be classified as agricultural, grazing, or as suitable for town lots. The classification and appraisement provided for herein shall be completed within six months from the date of the passage of this act, shall be sworn to by the appraisers, and shall become effective when approved by the Secretary of the Interior: Provided, That in the proceedings and deliberations of said appraisers in the process of said appraisement and in the approval thereof the Choctaw and Chickasaw Nations may present for consideration facts, figures, and arguments bearing upon the value of said property.

SEC. 2. That after such classification and appraisement has been made each holder of a coal or asphalt lease shall have a right for 60

days, after notice in writing, to purchase, at the appraised value and upon the terms and conditions hereinafter prescribed, a sufficient amount of the surface of the land covered by his lease to embrace improvements actually used in present mining operations or necessary for future operations up to 5 per cent of such surface, the number, location, and extent of the tracts to be thus purchased to be approved by the Secretary of the Interior: Provided, That the Secretary of the Interior may, in his discretion, enlarge the amount of land to be purchased by any such lessee to not more than 10 per cent of such surface: Provided further, That such purchase shall be taken and held as a waiver by the purchaser of any and all rights to appropriate to his use any other part of the surface of such land, except for the purpose of future operations, prospecting, and for ingress and egress, as hereinafter reserved: Provided further, That if any lessee shall fail to apply to purchase under the provisions of this section within the time specified the Secretary of the Interior may, in his discretion, with the consent of the lessee, designate and reserve from sale such tract or tracts as he may deem proper and necessary to embrace improvements actually used in present mining operations, or necessary for future operations, under any existing lease, and dispose of the remaining portion of the surface within such lease free and clear of any claim by the lessee, except for the purposes of future operations, prospecting, and for ingress and egress, as hereinafter reserved.

SEC. 3. That sales of the surface under this act shall be upon the conditions that the Choctaw and Chickasaw Nations, their grantees, lessees, assigns, or successors, shall have the right at all times to enter upon said lands for the purpose of prospecting for coal or asphalt thereon, and also the right of underground ingress and egress, without compensation to the surface owner, and upon the further condition that said nations, their grantees, lessees, assigns, or successors, shall have the right to acquire such portions of the surface of any tract, tracts, or rights thereto as may be reasonably necessary for prospecting or for the conduct of mining operations or for the removal of deposits of coal and asphalt upon paying a fair valuation for the portion of the surface so acquired. If the owner of the surface and the then owner or lessee of such mineral deposits shall be unable to agree upon a fair valuation for the surface so acquired, such valuation shall be determined by three arbitrators, one to be appointed, in writing, a copy to be served on the other party by the owner of the surface, one in like manner by the owner or lessee of the mineral deposits, and the third to be chosen by the two so appointed; and in case the two arbitrators so appointed should be unable to agree upon a third arbitrator within 30 days, then and in that event, upon the application of either interested party, the United States district judge in the district within which said land is located shall appoint the third arbitrator: Provided, That the owner of such mineral deposits or lessee thereof shall have the right of entry upon the surface so to be acquired for mining purposes immediately after the failure of the parties to agree upon a fair valuation and the appointment, as above provided, of an arbitrator by the said owner or lessee.

SEC. 4. That upon the expiration of two years after the lands have been first offered for sale the Secretary of the Interior, under rules and regulations to be prescribed by him, shall cause to be sold to the

highest bidder for cash the surface of any lands remaining unsold and of any surface lands forfeited by reason of nonpayment of any part of the purchase price, without regard to the appraised value thereof: Provided, That the Secretary of the Interior is authorized to sell at not less than the appraised value to the McAlester Country Club, of McAlester, Okla., the surface of not to exceed 160 acres in section 17, township 5 north, range 15 east: Provided further, That the mineral underlying the surface of the lands condemned for the State penitentiary at McAlester, Okla., under the Indian appropriation act approved March 3, 1909, shall be subject to condemnation, under the laws of the State of Oklahoma, for State penitentiary purposes: And provided further, That said mineral shall not be mined for other than State penitentiary purposes.

SEC. 5. That the sales herein provided for shall be at public auction under rules and regulations and upon terms to be prescribed by the Secretary of the Interior, except that no payment shall be deferred longer than two years after the sale is made. All agricultural lands shall be sold in tracts not to exceed 160 acres, and deeds shall not be issued to any one person for more than 160 acres of agricultural land, grazing lands in tracts not to exceed 640 acres, and lands especially valuable by reason of proximity to towns or cities may, in the discretion of the Secretary of the Interior, be sold in lots or tracts containing not less than 1 acre each. All deferred payments shall bear interest at 5 per cent per annum, and if default be made in any payment when due all rights of the purchaser thereunder shall, at the discretion of the Secretary of the Interior, cease and the lands shall be taken possession of by him for the benefit of the two nations, and the money paid as the purchase price of such lands shall be forfeited to the Choctaw and Chickasaw Tribes of Indians.

SEC. 6. That if the mining trustees of the Choctaw and Chickasaw Nations and the three appraisers herein provided for, or a majority of the said trustees and appraisers, shall find that such tract or tracts can not be profitably mined for coal or asphalt and can be more advantageously disposed of by selling the surface and the coal and asphalt together, such tract or tracts may be sold in that manner, in the discretion of the Secretary of the Interior, and patents issued for said lands as provided by existing laws: Provided, That this section shall not apply to land now leased for the purpose of mining coal or asphalt within the segregated and reserved area herein described.

SEC. 7. That when full purchase price for any property sold herein is paid, the chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser an appropriate patent or instrument of conveyance conveying to the purchaser the property so sold, and all conveyances made under this act shall convey the fee in the land with reservation to the Choctaw and Chickasaw Tribes of Indians of the coal and asphalt in such land, and shall contain a clause or clauses reciting and containing the reservations, restrictions, covenants, and conditions under which the said property was sold, as herein provided, and said conveyances shall specifically provide that the reservations, restrictions, covenants, and conditions therein contained shall run with the land and bind the grantees, successors, representatives, and assigns of the purchaser of the surface: Provided, That the purchaser of the surface of any coal or asphalt land shall have the right

at any time before final payment is due to pay the full purchase price on the surface of said coal or asphalt land, with accrued interest, and shall thereupon be entitled to patent therefor, as herein provided.

SEC. 8. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated belonging to the Choctaw and Chickasaw Tribes of Indians, the sum of fifty thousand dollars to pay expenses of the classification, appraisement, and sales herein provided for, and the proceeds received from the sales of lands hereunder shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and disposed of in accordance with section 17 of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in Indian Territory, and for other purposes," approved April 26, 1906, and the Indian Appropriation Act approved March 3, 1911.

SEC. 9. That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules, regulations, terms, and conditions not inconsistent with this act as he may deem necessary to carry out its provisions, including the establishment of an office during the sale of this land at McAlester, Pittsburg County, Okla.

37 STAT. 518, p. 534, AUGUST 24, 1912.

Amendment to 37 Stat. 67.

COAL AND ASPHALT LANDS—SALE OF SURFACE.

AN ACT Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1913.

Be it enacted, etc., * * *

That the act of Congress approved February 19, 1912 (37 Stat. 67), being "An act to provide for the sale of the surface of the coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes," be, and the same is hereby, amended to provide that the classification and appraisement of such lands shall be completed not later than December 1, 1912.

37 STAT. 78, APRIL 5, 1912.

COAL LEASES—CHOCTAW AND CHICKASAW NATIONS.

AN ACT Authorizing the Secretary of the Interior to permit the Missouri, Kansas & Texas Coal Co. and the Eastern Coal & Mining Co. to exchange certain lands embraced within their existing coal leases in the Choctaw and Chickasaw Nations for other lands within said nations.

Be it enacted, etc., That the Secretary of the Interior be, and he hereby is, authorized and directed to permit the Missouri, Kansas & Texas Coal Co. to relinquish certain lands embraced in its existing Choctaw and Chickasaw coal lease, which have been demonstrated to be not valuable for coal, as follows: Southwest quarter of the northwest quarter, south half of the southeast quarter of the northwest quarter, northwest quarter of the southwest quarter, east half of the southwest quarter, west half of the southeast quarter, south half of the southeast quarter of the southeast quarter, section 35, township 6 north, range 18 east; north half of the northeast quarter of section 2, township 5, north, range 18 east; embracing 360 acres, more or less; and to include within the lease in lieu thereof the following-described land, which is within the segregated coal area and un-

leased: Northeast quarter of section 36; east half of the northwest quarter of section 36, township 6 north, range 18 east; southeast quarter of southwest quarter and south half of southeast quarter of section 25, township 6 north, range 18 east; embracing 360 acres, more or less.

SEC. 2. That the Secretary of the Interior be, and he hereby is, authorized and directed to permit the Eastern Coal & Mining Co. to relinquish certain lands embraced in its existing Choctaw and Chickasaw coal lease, which have been demonstrated to be not valuable for coal, as follows: South half of the northwest quarter of the northwest quarter, southwest quarter of the northwest quarter, south half of the southeast quarter of the southeast quarter, northeast quarter of the southwest quarter of section 1, township 5 north, range 18 east; embracing 120 acres, more or less; and to include within the lease in lieu thereof the following-described land, which is within the segregated coal area and unleased: Southwest quarter of the southwest quarter of section 30, township 6 north, range 19 east; west half of the northwest quarter of section 31, township 6 north, range 19 east; embracing 120 acres, more or less.

37 STAT. 518, p. 531, AUGUST 24, 1912.

IMPROVEMENTS ON COAL LANDS.

AN ACT Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June 30, 1913.

Be it enacted, etc., That the following sums be and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, * * *

SEC. 18. For expenses of administration of the affairs of the Five Civilized Tribes, Oklahoma, and the compensation of employees, $200,000.

* * * * * * *

To enable the Secretary of the Interior to make the appraisement and sale hereinafter provided, $5,000: Provided, That the houses and other valuable improvements, not including fencing and tillage, placed upon the segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in Oklahoma, by private individuals, while in actual possession of said land and prior to February 19, 1912, and not purchased by the Indian Nations, shall be appraised independently of the surface of the land on which they are located and shall be sold with the land at public auction at not less than the combined appraised value of the improvements and the surface of the land upon which they are located. Said improvements shall be sold for cash and the appraisement and sale of the same shall be made under the direction of the Secretary of the Interior and 95 per centum of the amount realized from the sale of the improvements shall be paid over under the direction of the Secretary of the Interior to the owner of the improvements and the appropriation hereinbefore made for this purpose shall be reimbursed out of the 5 per centum retained from the sale of the said improvements: Provided, That

any improvements remaining unsold at the expiration of two years from the time when first offered for sale shall be sold under such regulations and terms of sale, independent of their appraised value, as the Secretary of the Interior may prescribe: Provided further, That persons owning improvements so appraised may remove the same at any time prior to the sale thereof, in which event the appraised value of the improvements and land shall be reduced by deducting the appraised value of the improvements so removed: Provided further, That this section shall not apply to improvements placed on said lands by coal and asphalt lessees for mining purposes, but improvements located on lands leased for mining purposes belonging to, or heretofore paid for by, the Choctaw and Chickasaw Nations shall be appraised and the appraised value thereof shall be added to the appraised value of the land at the time of the sale: Provided further, That where any cemetery now exists on the said segregated coal and asphalt lands, the surface of the land within said cemetery, together with the land adjoining the same, where necessary, not exceeding 20 acres in the aggregate to any one cemetery, and where a church was in existence on said lands on February 19, 1912, land not exceeding 1 acre for each church may, in the discretion of the Secretary of the Interior, be sold to the proper party, association, or corporation, under such terms, conditions, and regulations as he may prescribe, provided application to purchase the same for such purpose is made within 60 days from the date of the approval of this act.

LAND DEPARTMENT.

9 STAT. 395, MARCH 3, 1849.

DEPARTMENT OF THE INTERIOR—SUPERVISION OF MINERALS TRANSFERRED TO.

AN ACT To establish the home department (Interior), etc.

Be it enacted, etc., That from and after the passage of this act there shall be created a new executive department of the Government of the United States, to be called the Department of the Interior.

* * * * * * *

SEC. 8. That the supervisory and appellate powers now exercised by the Secretary of the Treasury over the lead and other mines of the United States, and over the accounts of the agents thereof, shall be exercised by the Secretary of the Interior; who shall sign all requisitions for the advance or payment of money out of the Treasury, on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the Second Auditor and Second Comptroller of the Treasury.

* * * * * * *

See sec. 441 R. S., p. 829.

31 STAT. 960, p. 1003, MARCH 3, 1901.

MINERAL SURVEYORS—STATIONERY.

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1902, etc.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, in full compensation for the service of the fiscal year ending June 30, 1902, for the objects hereinafter expressed, namely: * * * Provided, That the stationery and drafting instruments hereafter purchased for exclusive use in the offices of the surveyors general in the preparation of plats and field notes of mineral surveys, as also the rent of additional quarters that may be necessary for the execution of such work, shall be paid for out of the fund created by deposits made by individuals to the credit of the United States to cover the cost of office work on such mineral surveys.

A. PAYMENT OF EXPENSES OF PLATS AND FIELD NOTES.

By this statute the stationery and drafting instruments purchased exclusively for use in the preparation of plats and field notes of mineral surveys as well as the rent of additional quarters necessary for such work must be paid out of the mineral survey deposit funds.

Hanson, In re, 38 L. D. 469, p. 471.

LEAD MINES.

See salines and salt springs: 2 Stat. 445, p. 1197; 3 Stat. 256, p. 1199; 5 Stat. 507, p. 1208.
See settlers' relief, 3 Stat. 260, p. 1215.
See State grants, p. 1239.

3 STAT. 232, APRIL 20, 1816.

LEAD MINES AND SALINES—ILLINOIS, MICHIGAN, AND MISSOURI.

AN ACT To authorize the survey of 2,000,000 acres of the public lands, in lieu of that quantity authorized to be surveyed, in the Territory of Michigan, as military bounty lands.

Be it enacted, etc., That so much of the "Act to provide for designating, surveying, and granting the military bounty lands," approved the 6th day of May, 1812, as authorizes the President of the United States to cause to be surveyed 2,000,000 acres of the lands of the United States, in the Territory of Michigan, for the purpose of satisfying the bounties of lands promised to the noncommissioned officers and soldiers of the United States, be, and the same is hereby repealed; and in lieu of the said 2,000,000 acres of land the President of the United States be, and he is hereby authorized to cause to be surveyed, of the lands of the United States fit for cultivation not otherwise appropriated, and to which the Indian title is extinguished, 1,500,000 acres in the Illinois Territory, and 500,000 acres in the Missouri Territory north of the river Missouri; the said lands shall be divided into townships and subdivided into sections and quarter sections, each quarter section to contain, as near as possible, 160 acres, in the manner prescribed by law for surveying and subdividing the other lands of the United States; and the land thus surveyed, with the exception of the salt springs and lead mines therein, and of the quantities of lands adjacent thereto as may be reserved for the use of the same by the President of the United States, and the section number 16 in every township, to be granted to the inhabitants of such township for the use of public schools, shall, according to the provisions of the above-recited act, be set apart for the purpose of satisfying the bounties of land promised to the noncommissioned officers and soldiers of the late Army of the United States, their heirs and legal representatives, by the act entitled "An act for completing the existing military establishments, approved the 24th day of December, 1811," and by the act entitled "An act to raise an additional military force," approved January 11, 1812.

* * * * * * *

4 STAT. 364, MARCH 3, 1829.

RESERVED LEAD MINES—SALE—MISSOURI.

AN ACT To authorize the President of the United States to cause the reserved lead mines in the State of Missouri to be exposed to public sale.

Be it enacted, etc., That the President be, and he hereby is, authorized, at any time that he shall think proper, to cause the reserved

lead mines, and contiguous lands, in the State of Missouri, belonging to the United States, and unclaimed by individuals, to be exposed to sale, in the same manner that other public lands are authorized by law to be sold, except as hereinafter provided.

SEC. 2. And be it further enacted, That six months' notice, at least, of the times and places of the said sales, shall be given in such newspapers of general circulation in such of the States as the President may think expedient, with a brief description of the mineral region in Missouri, and of the lands to be offered for sale, showing the number and the localities of the different mines now known, the probability of discovering others, the quality of the ore, the facilities for working it, the further facilities, if any, for manufactories of shot, sheet lead, and paints, and the means and expense of transporting the whole to the principal markets in the United States.

SEC. 3. And be it further enacted, That in all cases of confirmation or sales of lands in Missouri, reported to contain lead ore, the patent shall be issued to the person in whose favor the confirmation has been made, or to the purchaser from the United States, or their heirs or assignees, as in ordinary cases of confirmation or sales.

A. LEAD MINES—DISPOSAL.
B. SALT SPRINGS—DISPOSAL.
C. LEASING SALINES AND LEAD MINES.

A. LEAD MINES—DISPOSAL.

By this act Congress directed an absolute disposition of the reserved lead mines and contiguous lands in the State of Missouri.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 488.

B. SALT SPRINGS—DISPOSAL.

By this act Congress directed an absolute disposition by sale of the reserved salt springs and contiguous lands in the State of Missouri.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 488.

C. LEASING SALINES AND LEAD MINES.

The repeated legislation by Congress on the subject of salines and lead mines, with the full knowledge of the exercise of the power of leasing such lands west of the Mississippi River, has established the power and usage too strongly to be disturbed.

Lease of Lead Mines, In re, 4 Op. Atty. Genl. 499.

4 STAT. 694, JUNE 26, 1834.

SALE OF LEAD MINES—ILLINOIS AND MISSOURI.

AN ACT To create additional land districts in Illinois and Missouri and in territory north of Illinois.

Be it enacted, etc., * * *

SEC. 4. And be it further enacted, That the President shall be authorized, so soon as the survey shall have been completed, to cause to be offered for sale, in the manner prescribed by law, all the lands lying in said land districts, at the land offices in the respective districts in which the land so offered is embraced, reserving only sec-

tion 16 in each township, the tract reserved for the village of Galena, such other tracts as have been granted to individuals and the State of Illinois, and such reservations as the President shall deem necessary to retain for military posts, any law of Congress heretofore existing to the contrary notwithstanding.

A. CONSTRUCTION—PRESIDENT'S POWER TO SELL LEAD MINES.
B. LEAD MINES—SALE UNAUTHORIZED.

A. CONSTRUCTION—PRESIDENT'S POWER TO SELL LEAD MINES.

The reservations in the fourth section of this act of June 26, 1834, are limitations upon the President's authority to sell lands, and are not enlargements of his authority to sell lands, which by law, he was never authorized to sell, but which he has always been prohibited by law from selling, and which never have been sold except under the authority of a special statute, such as the act of March 3, 1829, which expressly authorizes the President to cause the reserve lead mines in the State of Missouri to be sold.

United States v. Gear, 44 U. S. (3 How.) 120, p. 130.

Under this section the President is authorized to offer for sale according to law, and in connection with other lands, any mineral lands situated within the several land districts created by the first section of the act, except where such mineral lands are expressly embraced by any of the exceptions in this section.

Mineral lands in Wisconsin, In re, 3 Op. Atty. Genl. 277, p. 278.

Section 4 of this act does not repeal section 5 of the act of March 3, 1807; and these acts do not present a case of conflict in the sense in which statutes do, when, from some expression in a later act it would appear that something was intended to be excepted from the force of the former statute, or to operate as a partial repeal of the older law. On this theory the statute of 1834 authorizing the sale of all lands within the district is held to mean lands in which there are, and in which there are not, minerals or lead mines; but the power given in the statute of 1834 to sell all lands can not be said to be a power to sell the lands expressly reserved by the act of 1807, neither can it be said to repeal such reservation.

United States v. Gear, 44 U. S. (3 How.) 120, p. 131.

This section includes all mineral tracts and necessary timberlands leased to smelters and others, and the President not only has power, but it is his duty, to reserve from sale the lands described in unexpired leases executed by him.

Mineral lands in Wisconsin, In re, 3 Op. Atty. Genl. 277, p. 278.

B. LEAD MINES—SALE UNAUTHORIZED.

This section does not authorize the President to cause to be sold the public lands containing lead mines situated in the new land districts created by the act.

United States v. Gear, 44 U. S. (3 How.) 120, p. 129.

9 STAT. 37, JULY 11, 1846.

SALE OF LEAD MINES—ARKANSAS, ILLINOIS, IOWA, AND WISCONSIN.

AN ACT To authorize the President to sell the reserved mineral lands in Illinois, Arkansas, Wisconsin, and Iowa supposed to contain lead ore.

Be it enacted, etc., That the President be, and hereby is, authorized, as soon as practicable, to cause the reserve lead mines and contiguous lands in the State of Illinois and Arkansas, and Territories of Wiscon-

sin and Iowa, belonging to the United States, to be exposed to sale, in the same manner that other public lands are authorized by law to be sold, except as hereinafter provided.

SEC. 2. That six months' notice of the times and places of said sales shall be given in such newspapers of general circulation, in such of the States as the President may think expedient, with a brief description of the mineral regions of the States of Illinois and Arkansas, and Territories of Wisconsin and Iowa, and of the lands to be offered for sale; showing the number and localities of the different mines now known, the probability of discovering others, the quality of the ore, the facilities of working it, the further facilities (if any) for manufactories of shot, sheet lead, and paints, and the means and expense of transporting the whole to the principal markets in the United States: Provided, That the said lands shall not be subject to the rights of preemption until after the same have been offered at public sale and subject to private entry.

SEC. 3. That upon satisfactory proof, made to the register and receiver of the proper land office, that any tract or tracts of said lands contain a mine or mines of lead ore, actually discovered and being worked, then, and in that case, the same shall be sold in such legal subdivision or subdivisions as will include such mine or mines; and no bid shall be received therefor at a less rate than the sum of $2.50 per acre; and if such tract or tracts shall not be sold at such public sale, at such price, nor shall be entered at private sale within 12 months thereafter, then the same shall be subject to sale as other lands: Provided, That no legal subdivision of any of said lands upon which there may be an outstanding lease or leases from the Government of the United States, or their authorized agent, unexpired and undetermined, shall be sold until after the determination of such lease or leases by effluxion of time, voluntary surrender, or other legal extinguishment thereof.

OIL AND PHOSPHATE LANDS.

29 STAT. 526, 2 SUPP. R. S. 549, FEBRUARY 11, 1897.

OIL LANDS—LOCATION AS PLACER CLAIMS.

AN ACT To authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States.

Be it enacted, etc., That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims: Provided, That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

See section 2329 R. S., p. 507.

A. OIL LANDS.

1. OIL LANDS LOCATED AS PLACER CLAIMS.
2. LOCATION OF OIL CLAIMS.
   - a. LANDS CHIEFLY VALUABLE FOR OIL.
   - b. DISCOVERY—WHAT CONSTITUTES.
   - c. DISCOVERY—INSUFFICIENCY.
   - d. ASPHALTUM LOCATED AS OIL CLAIMS.
   - e. EXISTING LOCATIONS APPROVED.
   - f. PRIORITY OF LOCATION—PROTECTION.
   - g. FIRST LOCATOR NOT A DISCOVERER—KNOWLEDGE NECESSARY.
   - h. ACREAGE—ONE DISCOVERY.
3. CONTEST WITH HOMESTEAD CLAIMANT.
4. HEARING TO DETERMINE CHARACTER OF LAND.

1. OIL LANDS LOCATED AS PLACER CLAIMS.

See Stone lands, 27 Stat. 348, p. 1239.

By this statute lands containing oil and chiefly valuable therefor may be entered and patented under the laws relating to placer mining claims.

Chrisman v. Miller, 197 U. S. 313, p. 320.
Cates v. Producers & Consumers Oil Co., 96 Fed. 7, p. 8.
Butte Oil Co., In re, 40 L. D. 602.
Dewey, In re, 9 C. L. O. 51.
Weed v. Snook, 144 Cal. 439, p. 440.
McLeMore v. Express Oil Co., 158 Cal. 559, p. 562.
Bay v. Oklahoma Southern Gas etc. Min. Co., 13 Okla. 425, p. 429.

The language of this act clearly indicates and the history of its enactment shows that lands containing petroleum or other mineral oils may be held and patented as placer mining claims.

Union Oil Co., In re (on review), 25 L. D. 351, p. 354.

Lands containing petroleum or other mineral oils or a deposit of natural gas may be located as placer claims under this statute.

New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211 p. 213.
Whiting v. Straup, 17 Wyo. 1, p. 19.

The location and sale of oil land is governed by the mineral laws of the United States applicable to the location and sale of placer mining claims; and a location made under the law is a mining claim before patent in every sense of the word, and for the purpose of a lien law it does not cease to be a mining claim because a patent transfers the fee to the locator.

Berentz v. Belmont Oil Mining Co., 148 Cal. 577, p. 582.

2. LOCATION OF OIL CLAIMS.

a. LANDS CHIEFLY VALUABLE FOR OIL.

All lands containing petroleum are not subject to entry under the mineral laws, but only such as are "chiefly valuable therefor," and this is a subject of proof, and if oil is found in such limited quantities that it can not be worked at a profit, then such land can not be said to be chiefly valuable for oil.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 434.

Persons claiming the right to enter or locate lands within the Indian reservations under this act must show that the land claimed contains petroleum or other mineral oils and is chiefly valuable therefor.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 433.

b. DISCOVERY—WHAT CONSTITUTES.

If a competent locator actually finds upon unappropriated public land petroleum in or upon the ground, situated so as to form a part of it, it is a sufficient discovery to justify the location under the statute without waiting to ascertain by exploration whether the ground contains such petroleum in sufficient quantities to pay; but mere indications of the existence of oil does not constitute such a discovery.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 676.
Lange v. Robinson, 148 Fed. 799, p. 803.
Butte Oil Co., In re, 40 L. D. 602.
See Smith v. Union Oil Co. (Cal.), 135 Pac. 966.

While the statute requiring as a condition to a valid location a discovery of mineral within the limits of a claim, yet as between conflicting claimants to mineral lands it should receive a broad and liberal construction so as to protect bona fide locators who have really made a discovery of mineral, but the fact remains that mere indications of the existence of mineral or of oil is not the thing itself within the meaning of this statute.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 676.

This statute authorizes any person believing that public lands contain oil to lawfully enter thereon and make locations of 20-acre tracts and commence searching for such oil; but the discovery of mineral is essential for a valid location, and the locator while searching for oil or mineral is not a trespasser upon the public lands of the United States.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.

In order to ascertain the oil or nonoil character of the land in a forest reserve or lieu selection, attention may be directed to fixing the exact location of oil wells upon adjacent lands, their depth, the characteristic strata encountered therein, as well as the quantity of oil produced, so that the geological conditions and relation of the rock in place to the known oil field may be intelligently considered.

Hirshfeld v. Chrisman, 40 L. D. 112, p. 116.

To constitute a discovery of oil or petroleum under this act the law requires something more than conjecture, hope, or even indications, and the geological formation with practical experience taken with surface indications, such as seepage of oil, may be sufficient to justify further expectations and hope that upon drilling a well oil may be discovered, but taken alone they do not amount to a discovery.

Butte Oil Co., In re, 40 L. D. 602, p. 605.
See Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.
Miller v. Chrisman, 140 Cal. 440.
New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211.
Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425.

Until some body or vein of oil, by drilling into the earth, has been discovered, from which oil can be brought to the surface, it is not sufficient to warrant a location under this statute.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 437.

A locator who has entered upon public lands and discovered petroleum or other mineral oils thereon, and has shown the lands to be mineral in character is entitled to hold such location as against a nonmineral applicant who failed to show by proper averments that the lands were open to settlement.

Riverside Oil Co. v. Hitchcock, 21 App. Cases, D. C. 252, p. 264; affirmed in 190 U. S. 316.

A discovery of mineral under this act, as well as in placer mining claims, must be sufficient to justify a prudent mind in the expenditure of money and labor in exploitation for petroleum.

Cook v. Johnson, 3 Alaska 506, p. 534.
See Chrisman v. Miller, 197 U. S. 313.

Lands containing petroleum can not be entered under this statute where oil was discovered after the lands became a part of the Glacier National Park.

Butte Oil Co., In re, 40 L. D. 602, p. 606.

c. DISCOVERY—INSUFFICIENCY.

Mere indications of the presence of oil on a claim are not sufficient to answer the requirements of the statute, as an actual discovery of oil within the limits of the claim is an essential condition to the making of a valid location of any unappropriated lands of the United States.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, pp. 675, 679.
See Colorado Coal, etc., Co. v. United States 123 U. S. 307.
Waterloo Min. Co. v. Doe, 56 Fed. 685.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 572.
Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 437.
New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211, p. 213.

A valid location can not be made upon oil lands merely from surface indications, though it would lead any petroleum expert to pronounce the same oil or petroleum territory and chiefly valuable therefor.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 572.
Butte Oil Co., In re, 40 L. D. 602.
New England & Coalinga Oil Co. v. Congdon, 152 Cal. 211, p. 213.

A person can not make a valid location upon oil lands based upon mere surface indications without an actual discovery where another person is in possession of the same land actually engaged in working and developing the same in the way of drilling for oil under an attempted location of the same.

Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673, p. 679.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 572.
Miller v. Chrisman, 140 Cal. 440, p. 446.
Weed v. Snook, 144 Cal. 439, p. 440.

A pretended location on oil lands under the statute relating to placer mining claims is void where no discovery of oil or other mineral had been made, and where such alleged locators did not continue in the actual possession of any part of the premises, and such occupancy did not prevent others if done peaceably from making locations under the mining laws.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 573.
See Belk v. Meagher, 104 U. S. 279.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, pp. 40, 41.
Horswell v. Ruiz, 67 Cal. 111.
Garthe v. Hart, 73 Cal. 541.
Hopkins v. Noyes, 4 Mont. 550.
McCormick v. Varnes, 2 Utah 355.

d. ASPHALTUM LOCATED AS OIL CLAIM.

While asphaltum varying in its consistency from a liquid, when in a liquid or semi-liquid state, may be located under this petroleum or mineral oil statute, yet when it assumes the form of gilsonite and is found in a vein or lode in rock in place it is not subject to location under this amendatory act.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 206.
See Duffield v. San Francisco Chemical Co., 198 Fed. 942.
San Francisco Chemical Co. v. Duffield, 201 Fed. 830.
Duffield v. San Francisco Chemical Co., 205 Fed. 480.

A deposit of asphaltum in a lode or vein in rock in place was locatable by means of a lode mining claim and was not subject to location by a placer claim under either the act of 1866 or the act of 1872 at the time of the adoption of this amendatory act, and in 1896 the Secretary of the Interior decided that lands valuable for petroleum could not be entered and patented under the placer mining claim section, and the passage of this amendatory act following immediately such decision indicates that Congress did not intend to thereby change the prescribed method for the entry of veins of asphaltum in rock in place, but that the only purpose of the amendatory act was to restore the rule and practice regarding petroleum and other mineral oils which were not found in veins or lodes which prevailed before the decision of the Secretary of the Interior.

Webb v. American Asphaltum Min. Co., 157 Fed. 203, p. 207.
See Rogers, In re, 4 L. D. 284.
Piru Oil Co., In re, 16 L. D. 117.
Union Oil Co., In re, 23 L. D. 222.

Nonmetalliferous deposits, such as asphaltum, found in lodes or veins in rock in place can not be entered under this act.

Harry Lode Min. Claim, In re, 41 L. D. 403, p. 408.
See Utah Onyx Dev. Co., In re, 38 L. D. 504.

e. EXISTING LOCATIONS APPROVED.

This statute recognizes, approves, and confirms the location of oil lands made prior to the time of its enactment.

Cates v. Producers & Consumers Oil Co., 96 Fed. 7, p. 8.

f. PRIORITY OF LOCATION—PROTECTION.

The locator of an oil location is protected in his possession if he diligently prosecutes the digging of wells, but he must mark the boundaries of his location and post and record his notice as required, but even then he acquires no vested right as against the United States.

McLemore v. Express Oil Co., 158 Cal. 559, p. 562.

An attempted mineral location under the placer laws of lands supposed to contain oil, but where no discovery has been made, will not be effective as against a homestead entry, as no vested right is initiated prior to the discovery of oil, and while a mining locator who is actually in possession of the land and diligently prosecuting his efforts to make a discovery of oil will be protected from any secret or fraudulent entry by another, yet such diligent prosecution of the work does not mean the mere doing of assessment work or an attempt to hold the lands by means of a cabin, or unused appliances, or the construction of a reservoir and sump hole, but it means diligent, continuous prosecuting of the work with the expenditure of whatever money may be necessary to the discovery of oil.

Hirshfeld v. Chrisman, 40 L. D. 112, p. 114.
See McLemore v. Express Oil Co., 158 Cal. 559.

g. FIRST LOCATOR NOT A DISCOVERER—KNOWLEDGE NECESSARY.

A locator of a mining claim need not necessarily be the first discoverer of a vein or lode, but if he knows at the time of making his location that there had been a discovery within the limit of his location he may base his location thereon.

McMillen v. Ferrum Min. Co., 32 Colo. 38, p. 43.
Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. 673.
See Conway v. Hart, 129 Cal. 480.
Wenner v. McNulty, 7 Mont. 30.
O'Donnell v. Glenn, 8 Mont. 248.
Hayes v. Lavagnino, 17 Utah, 185.

While it is not necessary that a locator should be the first discoverer of mineral upon land in order that the prior discovery by another will inure to his benefit, yet it must have been known, adopted, and claimed by him.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 437.
See Olive Land & Dev. Co., 103 Fed. 568.

h. ACREAGE—ONE DISCOVERY.

A placer claim is limited to 20 acres to each individual locator, and 160 acres is the aggregate that may be located by an association of persons, but one discovery is sufficient for the entire claim even if it consists of more than 20 acres.

Whiting v. Straup, 17 Wyo. 1, p. 20.

3. CONTEST WITH HOMESTEAD CLAIMANT.

A mineral claimant who has not made a valid location prior to a homestead entry must contest the adverse homestead entry and secure its cancellation, and until this is done he can not jointly occupy the land with the homesteader, as there can not be two valid entries on the same land at the same time, nor can there be a valid mineral location and a valid homestead entry.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 435.

This act does not authorize or justify a person seeking to locate an oil claim to enter upon land held under an agricultural entry, for the purpose of exploiting such land for the purpose of testing its mineral value.

McLemore v. Express Oil Co., 158 Cal. 559, p. 566.

4. HEARING TO DETERMINE CHARACTER OF LAND.

The department may order a hearing to determine whether lands in controversy were oil lands and were known to be such at the time the proof of publication and posting of notice were completed, this being the time when the rights of the applicant vested.

Hirshfeld v. Chrisman, 40 L. D. 112, p. 116.
See Harkrader v. Goldstein, 31 L. D. 87, p. 94.

32 STAT. 825, FEBRUARY 12, 1903.

OIL-MINING CLAIMS—ASSESSMENT WORK.

AN ACT Defining what shall constitute and providing for assessments on oil-mining claims.

Be it enacted, etc., That where oil lands are located under the provisions of sections 2329–2333, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, That said labor will tend to development or to determine the oil-bearing character of such contiguous claims.

36 STAT. 1015, MARCH 2, 1911.

OIL AND GAS LANDS—LOCATORS PROTECTED.

AN ACT To protect good faith locators of oil and gas lands.

Be it enacted, etc., That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding 160 acres in any one claim shall issue to the holder or holders thereof, as in other cases: Provided, however, That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.

See sec. 2329 R. S., p. 507.

A. OIL AND GAS LANDS.

1. DEFECTIVE TITLE CURED AND TRANSFERS PROTECTED.

This act was designed to cure defective titles to oil or gas land claimed where transfers had been made prior to discovery; accordingly the act can not apply where no work was being prosecuted which led to the discovery of oil and where there was no inception of development work on the claim at the date of departmental withdrawal, September 27, 1909.

Lowell, In re, 40 L. D. 303, p. 305.

Under this act patent is not to be denied for lands located under the mining laws containing petroleum or gas because of any transfer thereof, provided such lands were not at the time of the inception of the claim withdrawn from mineral entry.

Graham, In re, 40 L. D. 128, p. 129.

38 STAT. 708, AUGUST 25, 1914 (PUBLIC—NO. 187.—63D CONGRESS).

OIL AND GAS LANDS—LOCATORS PROTECTED—AMENDMENT.

AN ACT To amend an Act entitled "An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest," approved March 2, 1911.

Be it enacted, etc., That an act entitled "An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest," approved March 2, 1911, be amended by adding thereto the following section:

"SEC. 2. That where applications for patents have been or may hereafter be offered for any oil or gas land included in an order of withdrawal upon which oil or gas has heretofore been discovered, or is being produced, or upon which drilling operations were in actual progress on October 3, 1910, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the Secretary of the Interior, or such other disposition of the same as may be authorized by law. Any money which may accrue to the United States under the provisions of this act from lands within the Naval petroleum reserves shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of a fund to be known as the Navy petroleum fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct, by appropriation or otherwise."

37 STAT. 496, AUGUST 24, 1912.

AGRICULTURAL ENTRIES—OIL AND GAS RESERVED.

AN ACT To provide for agricultural entries on oil and gas lands.

Be it enacted, etc., That from and after the passage of this act unreserved public lands of the United States in the State of Utah, which have been withdrawn or classified as oil lands, or are valuable for oil, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection by the State of Utah under grants made by Congress and under section 4 of the act approved August 18, 1894 (28 Stat. 372), known as the Carey Act, and to withdrawal under the act approved June 17, 1902 (32 Stat. 388), known as the reclamation act, and to disposition in the discretion of the Secretary of the Interior under the law providing for the sale of isolated or disconnected tracts of public lands, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the oil and gas in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this act shall contain more than 160 acres: Provided, That those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or

classified as oil lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

SEC. 2. That any person desiring to make entry under the homestead laws or the desert-land law, and the State of Utah desiring to make selection under section 4 of the act of August 18, 1894, known as the Carey Act, or under grants made by Congress, and the Secretary of the Interior in withdrawing under the reclamation act lands classified as oil lands, or valuable for oil, with a view of securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this act.

SEC. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made and of this act the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the oil and gas in the lands so patented, together with the right to prospect for, mine, and remove the same upon rendering compensation to the patentee for all damages that may be caused by prospecting for and removing such oil or gas. The reserved oil and gas deposits in such lands shall be disposed of only as shall be hereafter expressly directed by law.

37 STAT. 687, FEBRUARY 27, 1913.

OIL AND PHOSPHATE LANDS—SELECTION BY IDAHO.

AN ACT To provide for selection by the State of Idaho of phosphate and oil lands.

Be it enacted, etc., That from and after the passage of this act unreserved public lands of the United States in the State of Idaho which have been withdrawn or classified as phosphate or oil lands, or are valuable for phosphates or oil, shall, if otherwise available under existing law, be subject to selection by the State of Idaho under indemnity and other land grants made to it by Congress whenever such selections shall be made with a view of obtaining or passing title, with a reservation to the United States of the phosphates and oil in such lands, and of the right to prospect for, mine, and remove the same.

SEC. 2. That the State of Idaho, when applying to select lands classified as phosphate or oil lands, or valuable for phosphates or oil, with a view to securing or passing title to the same in accordance with the provisions of the indemnity and other granting acts, shall state in the application for selection that same is made in accordance with and subject to the provisions and reservations of this act.

SEC. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which selection is made and this act, the State shall, upon approval of the selection by the Secretary of the Interior, be entitled to have the lands certified to it, with a reservation to the United States of all the phosphates and oil in the land so certified, together with the right in the United States, or persons authorized by it, to prospect for, mine, and remove the same; but before any person not acting for the United States shall be entitled to enter upon the lands certified for the purpose of prospecting for

phosphates or oil he shall furnish, subject to approval by the Secretary of the Interior, a bond or undertaking as security for the payment of all damages to the crops and improvements on said lands by reason of such prospecting for phosphates or oil. Any person who has acquired from the United States the oil or phosphate deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the oil or phosphate therefrom and mine and remove the oil or phosphate upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That nothing herein contained shall be held to deny or abridge the right of the State of Idaho to present and have prompt consideration of applications to select lands, which have been classified as oil or phosphate lands, with a view to disproving such classification and securing a certificate without reservation: And provided further, That the reserved phosphate and oil deposits in approved selections under this act shall not be subject to exploration or entry, other than by the United States, except as hereinafter authorized by Congress.

38 STAT. 509, JULY 17, 1914 (PUBLIC—NO. 123—63d CONGRESS).

OIL AND PHOSPHATE LANDS—AGRICULTURAL ENTRY.

AN ACT To provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals.

Be it enacted, etc., That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this act shall contain more than 160 acres: Provided, That all applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of this act.

SEC. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the

payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: Provided, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

SEC. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

See page 1221.

PHILIPPINE ISLANDS MINING ACT.

31 STAT. 895, p. 910, MARCH 2, 1901.

PHILIPPINE ISLANDS—MINING RIGHTS.

AN ACT Making appropriations for the support of the Army for the fiscal year ending June 30, 1902.

Be it enacted, etc., * * *

All military, civil, and judicial powers necessary to govern the Philippine Islands, acquired from Spain by the treaties, * * *

Until a permanent government shall have been established in said archipelago full reports shall be made to Congress on or before the first day of each session of all legislative acts and proceedings of the temporary government instituted under the provisions hereof; and full reports of the acts and doings of said government, and as to the condition of the archipelago, and of its people, shall be made to the President, including all information which may be useful to the Congress in providing for a more permanent government: Provided, That no sale or lease or other disposition of the public lands or the timber thereon or the mining rights therein shall be made: * * *

A. UNOCCUPIED GROUND—ADVERSE CLAIM.

There can be no adverse claim under this act where the grounds are not unoccupied.

Reavis v. Franza, 215 U. S. 16, p. 24.

32 STAT. 697-710 (ORIGINAL ACT), JULY 1, 1902; 33 STAT. 689 (AMENDMENT), FEBRUARY 6, 1905.

MINING RIGHTS AND CLAIMS.

AN ACT Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes, approved July 1, 1902, as amended by Public—No. 43, approved February 6, 1905.

NOTE.—The sections of the original act and of the amended act are here combined.

Be it enacted, etc., * * *

SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December 10, 1898, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided in this act.

SEC. 13. That the government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall

classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed 16 hectares in extent.

SEC. 14. That the government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said islands, conveying title to any tract of land not more than 16 hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the 13th of August, 1898.

SEC. 15. That the government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said islands as it may deem wise, not exceeding 16 hectares to any one person and for the sale and conveyance of not more than 1,024 hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents.

MINERAL LANDS.

SEC. 20. That in all cases public lands in the Philippine Islands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

SEC. 21. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said islands; Provided, That when on any lands in said islands entered and occupied as agricultural lands under the provisions of this act, but not patented,

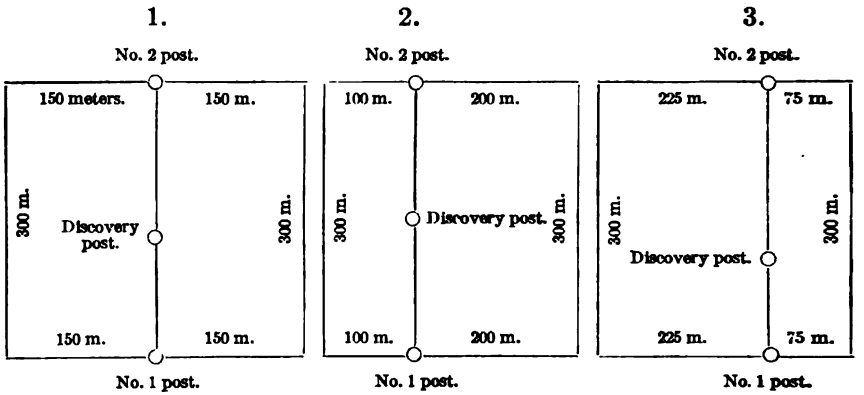
mineral deposits have been found, the working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the Government of said islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the Government for the same as mineral claims.

SEC. 22. That mining claims upon land containing veins or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits located after the passage of this act, whether located by one or more persons qualified to locate the same under the preceding section, shall be located in the following manner and under the following conditions: Any person so qualified desiring to locate a mineral claim shall, subject to the provisions of this act with respect to land which may be used for mining, enter upon the same and locate a plat (feet in original act) of ground measuring, where possible, but not exceeding 300 meters in length by 300 meters in breadth, in as nearly as possible a rectangular form; that is ot say, all angles shall be right angles, except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the lines need not necessarily be meridional. In defining the size of a mineral claim it shall be measured horizontally, irrespective of inequalities of the surface of the ground.

SEC. 23. That a mineral claim shall be marked by two posts, placed as nearly as possible on the line of the ledge or vein, and the posts shall be numbered 1 and 2, and the distance between posts numbered 1 and 2 shall not exceed 300 meters, the line between posts numbered 1 and 2 to be known as the location line; and upon posts numbered 1 and 2 shall be written the name given to the mineral claim, the name of the locator, and the date of the location. Upon post numbered 1 there shall be written, in addition to the foregoing, "Initial post," the approximate compass bearing of post numbered 2, and a statement of the number of meters (feet in original act) lying to the right and to the left of the line from post numbered 1 to post numbered 2, thus "Initial post. Direction of post numbered 2 . meters of this claim lie on the right and meters on the left of the line from number 1 to number 2 post." All the particulars required to be put on number 1 and number 2 posts shall be furnished by the locator to the provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, in writing, at the time the claim is recorded, and shall form a part of the record of such claim.

SEC. 24. That when a claim has been located the holder shall immediately mark the line between posts numbered 1 and 2 so that it can be distinctly seen. The locator shall also place a post at the point where he has found minerals in place, on which shall be written "Discovery post:" Provided, That when the claim is surveyed the surveyor shall be guided by the records of the claim, the sketch plan on the back of the declaration made by the owner when the claim was recorded, posts numbered 1 and 2, and the notice on number 1, the initial post.

EXAMPLES OF VARIOUS MODES OF LAYING OUT CLAIMS.



NOTE.—See section 8 of Act No. 624 of the Philippine Commission (see page 50), which requires corner posts in addition to above.

SEC. 25. That it shall not be lawful to move number 1 post, but number 2 post may be moved by the deputy mineral surveyor when the distance between posts numbered 1 and 2 exceeds 300 meters (1,000 feet in original act) in order to place number 2 post 300 meters from number 1 post on the line of location. When the distance between posts numbered 1 and 2 is less than 300 meters, the deputy mineral surveyor shall have no authority to extend the claim beyond number 2.

SEC. 26. That the "location line" shall govern the direction of one side of the claim, upon which the survey shall be extended according to this act.

SEC. 27. That the holder of a mineral claim shall be entitled to all minerals which may lie within his claim, but he shall not be entitled to mine outside the boundary lines of his claim continued vertically downward: Provided, That this act shall not prejudice the rights of claim owners nor claim holders whose claims have been located under existing laws prior to this act.

SEC. 28. That no mineral claim of the full size shall be recorded without the application being accompanied by an affidavit made by the applicant or some person on his behalf cognizant of the facts—that the legal notices and posts have been put up; that mineral has been found in place on the claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim. The words written on the number 1 and number 2 posts shall be set out in full, and as accurate a description as possible of the position of the claim given with reference to some natural object or permanent monuments.

SEC. 29. That no mineral claim which at the date of its record, is known by the locator to be less than a full-sized mineral claim, shall be recorded without the word "fraction" being added to the name of the claim, and the application being accompanied by an affidavit or solemn declaration made by the applicant or some person on his behalf cognizant of the facts: That the legal posts and notices have been put up; that mineral has been found in place

on the fractional claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim. The words written on the posts numbered 1 and 2 shall be set out in full, and as accurate a description as possible of the position of the claim given. A sketch plan shall be drawn by the applicant on the back of the declaration, showing as near as may be the position of the adjoining mineral claims and the shape and size, expressed in meters, of the claim or fraction desired to be recorded: Provided, That the failure on the part of the locator of a mineral claim to comply with any of the foregoing provisions of this section shall not be deemed to invalidate such location if, upon the facts, it shall appear that such locator has actually discovered mineral in place on said location and that there has been on his part a bona fide attempt to comply with the provisions of this act, and that the nonobservance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity.

SEC. 30. That in cases where, from the nature or shape of the ground, it is impossible to mark the location line of the claim as provided by this act then the claim may be marked by placing posts as nearly as possible to the location line, and noting the distance and direction such posts may be from such location line which distance and direction shall be set out in the record of the claim.

SEC. 31. That every person locating a mineral claim shall record the same with the provincial secretary, or such other officer as by the Government of the Philippine Islands may be described as mining recorder of the district within which the same is situate, within 30 days after the location thereof. Such record shall be made in a book to be kept for the purpose in the office of the said provincial secretary or such other officer as by said Government described as mining recorder, in which shall be inserted the name of the claim, the name of each locator, the locality of the mine, the direction of the location line, the length in meters (feet in original act), the date of location, and the date of the record. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned.

SEC. 32. That in case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself and subject to the holder having complied with all the terms and conditions of this act.

SEC. 33. That no holder shall be entitled to hold in his, its, or their own name or in the name of any other person, corporation, or association more than one mineral claim on the same vein or lode.

SEC. 34. That a holder may at any time abandon any mineral claim by giving notice, in writing, of such intention to abandon, to the provincial secretary or such other officer as by the government of the Philippine Islands may be described as mining recorder; and from the date of the record of such notice all his interest in such claim shall cease.

SEC. 35. That proof of citizenship under the clauses of this act relating to mineral lands may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons

unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in case of a corporation organized under the laws of the United States, or of any State or Territory thereof, or of the Philippine Islands, by the filing of a certified copy of their charter or certificate of incorporation.

SEC. 36. That the United States Philippine Commission or its successors may make regulations, not in conflict with the provisions of this act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements:

On each claim located after the passage of this act, and until a patent has been issued therefor, not less than 200 pesos' ($100 in original act) worth of labor shall be performed or improvements made during each year: Provided, That upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required thereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowners personal notice in writing, or notice by publication in the newspaper published nearest the claim, and in two newspapers published at Manila, one in the English language and the other in the Spanish language, to be designated by the chief of the Philippine insular bureau of public lands, for at least once a week for 90 days; and, if, at the expiration of 90 days after such notice in writing or by publication, such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his coowners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims shall commence on the 1st day of January succeeding the date of location of such claim.

SEC. 37. That a patent for any land claimed and located for valuable mineral deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this act, having claimed and located a piece of land for such purposes who has or have complied with the terms of this act, may file in the office of the provincial secretary, or such other officer as by the government of said islands may be described as mining recorder of the Province wherein the land claimed is located, an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the chief of the Philippine insular bureau of public lands, showing accurately the boundaries of the claim, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such office, and shall thereupon be entitled to a patent for the land, in the manner following: The

provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such an application has been made, once a week for the period of 60 days, in a newspaper to be by him designated as nearest to such claim, and in two newspapers published at Manila, one in the English language and one in the Spanish language, to be designated by the chief of the Philippine insular bureau of public lands; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter within the 60 days of publication, shall file with the provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, a certificate of the chief of the Philippine insular bureau of public lands that 1,000 pesos' ($500 in original act) worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the 60 days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the provincial secretary, or such other officer as by the government of said islands may be described as mining recorder, at the expiration of the 60 days of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the provincial treasurer, or the collector of internal revenue, of 25 pesos per hectare, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this act: Provided, That where the claimant for a patent is not a resident of or within the Province wherein the land containing the vein, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent where said agent is conversant with the facts sought to be established by said affidavits.

SEC. 38. That applicants for mineral patents, if residing beyond the limits of the Province or military department wherein the claim is situated, may make the oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any Province of the Philippine Islands, or any other official in said islands authorized by law to administer oaths.

SEC. 39. That where an adverse claim is filed during the period of publication it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavits thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived. It shall be the duty of the adverse claimant, within 30 days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession and prosecute the same with reasonable diligence to final judgment, and a failure so to

do shall be a waiver of his adverse claim. After such judgment shall have been rendered the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the provincial secretary, or such other officer as by the Government of the Philippine Islands may be described as mining recorder, together with the certificate of the Chief of the Philippine insular bureau of public lands that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the provincial treasurer or the collector of internal revenue of the Province in which the claim is situated, as the case may be, 25 pesos ($5 in original act) per hectare (acre in original act) for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the provincial secretary, or such other officer as by said government may be described as mining recorder, to the secretary of the interior of the Philippine Islands, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, rightly to possess. The adverse claim may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the Province wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record, or any notary public of any Province or military department of the Philippine Islands, or any other officer authorized to administer oaths where the adverse claimant may then be. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Chief of the Philippine insular bureau of public lands, whereupon the provincial secretary or such other officer as by the government of said islands may be described as mining recorder shall certify the proceedings and judgment roll to the secretary of the interior for the Philippine Islands, as in the preceding case, and patents shall issue to the several parties according to their respective rights. If, in any action brought pursuant to this section, title to the ground in controversy shall not be established by either party, the court shall so find, and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the office of the provincial secretary or such other officer as by the government of said islands may be described as mining recorder or be entitled to a patent for the ground in controversy until he shall have perfected his title. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

SEC. 40. That the description of mineral claims upon surveyed lands shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the Chief of the Philippine insular bureau of public lands in extending the surveys shall adjust the same to the boundaries of such patented claim according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

SEC. 41. That any person authorized to enter lands under this act may enter and obtain patent to lands that are chiefly valuable for building stone under the provisions of this act relative to placer mineral claims.

SEC. 42. That any person authorized to enter lands under this act may enter and obtain patent to lands containing petroleum or other mineral oils and chiefly valuable therefore under the provisions of this act relataive to placer mineral claims.

SEC. 43. That no location of a placer claim shall exceed 64 hectares for any association of persons, irrespective of the number of persons composing such association, and no such location shall include more than 8 hectares for an individual claimant. Such locations shall conform to the laws of the United States Philippine Commission, or its successors, with reference to public surveys, and nothing in this section contained shall defeat or impair any bona fide ownership of land for agricultural purposes or authorize the sale of the improvements of any bona fide settler to any purchaser.

SEC. 44. That where placer claims are located upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the date of passage of this act shall conform as nearly as practicable to the Philippine system of public-land surveys and the regular subdivisions of such surveys; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than 16 hectares shall remain, such fractional portion of agricultural land may be entered by any party qualified by law for homestead purposes.

SEC. 45. That where such person or association, they and their grantors have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.

SEC. 46. That the Chief of the Philippine insular bureau of public lands may appoint competent deputy mineral surveyors to survey mining claims. The expenses of the survey of vein or lode claims and of the survey of placer claims, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any such deputy mineral surveyor to make the survey. The Chief of the Philippine insular bureau of public lands shall also have power to establish the maximum charges for surveys and publication of notices under this act; and in case of excessive charges for publication he may designate any newspaper published in a Province where mines are situated, or in Manila, for the publication of mining notices and fix the rates to be charged by such paper; and to the end that the Chief of the bureau of public lands may be fully informed on the subject such applicant shall file with the provincial secretary, or such other officer as by the government of the Phillippine Islands may be described as mining recorder, a sworn statement of all charges and fees paid by such

applicant for publication and surveys, and of all fees and money paid the provincial treasurer or the collector of internal revenue, as the case may be, which statement shall be transmitted, with the other papers in the case, to the secretary of the interior for the Philippine Islands.

SEC. 47. That all affidavits required to be made under this act may be verified before any officer authorized to administer oaths within the Province or military department where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the proper provincial secretary or such other officer as by the government of the Philippine Islands may be described as mining recorder. In cases of contest as to the mineral or agricultural character of land the testimony and proofs may be taken as herein provided on personal notice of at least 10 days to the opposing party; or if such party can not be found, then by publication at least once a week for 30 days in a newspaper to be designated by the provincial secretary or such other officer as by said government may be described as mining recorder published nearest to the location of such land and in two newspapers published in Manila, one in the English language and one in the Spanish language, to be designated by the Chief of the Philippine insular bureau of public lands; and the provincial secretary or such other officer as by said government may be described as mining recorder shall require proofs that such notice has been given.

SEC. 48. That where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such nonadjacent land shall exceed 2 hectares, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz mill or reduction works not owning a mine in connection therewith may also receive a patent for his mill site as provided in this section.

SEC. 49. That as a condition of sale the government of the Philippine Islands may provide rules for working, policing, and sanitation of mines, and rules concerning easements, drainage, water rights, right of way, right of Government survey and inspection, and other necessary means to their complete development not inconsistent with the provisions of this act, and those conditions shall be fully expressed in the patent. The Philippine Commission or its successors are hereby further empowered to fix the bonds of deputy mineral surveyors.

SEC. 50. That whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed, but whenever any person, in the construction of any

ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 51. That all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the preceding section.

SEC. 52. That the government of the Philippine Islands is authorized to establish land districts and provide for the appointment of the necessary officers wherever they may deem the same necessary for the public convenience, and to further provide that in districts where land offices are established proceedings required by this act to be had before provincial officers shall be had before the proper officers of such land offices.

SEC. 53. That every person above the age of 21 years who is a citizen of the United States or of the Philippine Islands, or who has acquired the right of a native of said islands under and by virtue of the treaty of Paris, or any association of persons severally qualified as above, shall, upon application to the proper provincial treasurer, have the right to enter any quantity (quality in original act) of vacant coal lands of said islands, not otherwise appropriated or reserved by competent authority, not exceeding 64 hectares to such individual person, or 128 hectares to such association, upon payment to the provincial treasurer or the collector of internal revenue, as the case may be, of not less than 50 pesos ($25 in original act) per hectare for such lands, where the same shall be situated more than 25 kilometers from any completed railroad or available harbor or navigable stream, and not less than 100 pesos per hectare for such lands as shall be within 25 kilometers (75 miles in original act) of such road, harbor, or stream: Provided, That such entries shall be taken in squares of 16 or 64 hectares, in conformity with the rules and regulations governing the public-land surveys of the said islands in plotting legal subdivisions.

SEC. 54. That any person or association of persons, severally qualified as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry under the preceding section of the mines so opened and improved.

SEC. 55. That all claims under the preceding section must be presented to the proper provincial secretary within 60 days after the date of actual possession and the commencement of improvements on the land by the filing of a declaratory statement therefor; and where the improvements shall have been made prior to the expiration of three months from the date of the passage of this act, 60 days from the expiration of such three months shall be allowed for the filing of a declaratory statement; and no sale under the provisions of this act shall be allowed until the expiration of six months from the date of the passage of this act.

SEC. 56. That the three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provi-

sions thereof; and no member of any association which shall have taken the benefit of such section shall enter or hold any other lands under their provisions; and all persons claiming under section 58 shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 57. That in case of conflicting claims upon coal lands where the improvements shall be commenced after the date of the passage of this act, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the passage of this act, division of the land claimed may be made by legal subdivisions, which shall conform as nearly as practicable with the subdivisions of land provided for in this act, to include as near as may be the valuable improvements of the respective parties. The government of the Philippine Islands is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and preceding sections relating to mineral lands.

SEC. 58. That whenever it shall be made to appear to the secretary of any Province or the commander of any military department in the Philippine Islands that any lands within the Province are saline in character, it shall be the duty of said provincial secretary or commander, under the regulations of the government of the Philippine Islands, to take testimony in reference to such lands, to ascertain their true character, and to report the same to the secretary of the interior for the Philippine Islands; and if upon such testimony the secretary of the interior shall find that such lands are saline and incapable of being purchased under any of the laws relative to the public domain, then and in such case said lands shall be offered for sale at the office of the provincial secretary, or such other officer as by the said government may be described as mining recorder of the Province or department in which the same shall be situated, as the case may be, under such regulations as may be prescribed by said government and sold to the highest bidder for cash at a price of not less than 6 pesos ($3 in original act) per hectare; and in case such lands fail to sell when so offered, then the same shall be subject to private sale at such office, for cash, at a price not less than 6 pesos ($3 in original act) per hectare, in the same manner as other lands in the said islands are sold. All executive proclamations relating to the sales of public saline lands shall be published in only two newspapers, one printed in the English language and one in the Spanish language, at Manila, which shall be designated by said secretary of the interior.

SEC. 59. That no act granting lands to provinces, districts, or municipalities to aid in the construction of roads, or for other public purposes, shall be so construed as to embrace mineral lands, which, in all cases, are reserved exclusively, unless otherwise specially provided in the act or acts making the grant.

SEC. 60. That nothing in this act shall be construed to affect the rights of any person, partnership, or corporation having a valid perfected mining concession granted prior to April 11, 1899, but all such concessions shall be conducted under the provisions of the law in force at the time they were granted, subject at all times to cancella-

tion by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite to their retention in the laws under which they were granted: Provided, That the owner or owners of every such concession shall cause the corners made by its boundaries to be distinctly marked with permanent monuments within six months after this act has been promulgated in the Philippine Islands, and that any concessions the boundaries of which are not so marked within this period shall be free and open to explorations and purchase under the provisions of this act.

SEC. 61. That mining rights on public lands in the Philippine Islands shall, after the passage of this act, be acquired only in accordance with its provisions.

SEC. 62. That all proceedings for the cancellation of perfected Spanish concessions shall be conducted in the courts of the Philippine Islands having jurisdiction of the subject matter and of the parties, unless the United States Philippine Commission, or its successors, shall create special tribunals for the determination of such controversies.

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SEC. 64. That the powers hereinbefore conferred in section 63 may also be exercised in respect of any lands, easements, appurtenances, and hereditaments which, on the 13th of August, 1898, were owned or held by associations, corporations, communities, religious orders, or private individuals in such large tracts or parcels and in such manner as in the opinion of the commission injuriously to affect the peace and welfare of the people of the Philippine Islands. And for the purpose of providing funds to acquire the lands mentioned in this section said government of the Philippine Islands is hereby empowered to incur indebtedness, to borrow money, and to issue, and to sell at not less than par value, in gold coin of the United States of the present standard value or the equivalent in value in money of said islands, upon such terms and conditions as it may deem best, registered or coupon bonds of said government for such amount as may be necessary, said bonds to be in denominations of $50 or any multiple thereof, bearing interest at a rate not exceeding 4½ per centum per annum, payable quarterly, and to be payable at the pleasure of said government after dates named in said bonds not less than 5 nor more than 30 years from the date of their issue, together with interest thereon, in gold coin of the United States of the present standard value or the equivalent in value in money of said islands; and said bonds shall be exempt from the payment of all taxes or duties of said government, or any local authority therein, or of the Government of the United States, as well as from taxation in any form by or under State, municipal, or local authority in the United States or the Philippine Islands. The moneys which may be realized or received from the issue and sale of said bonds shall be applied by the government of the Philippine Islands to the acquisition of the property authorized by this section, and to no other purposes.

SEC. 65. That all lands acquired by virtue of the preceding section shall constitute a part and portion of the public property of the government of the Philippine Islands, and may be held, sold, and conveyed, or leased temporarily for a period not exceeding three years

after their acquisition by said government on such terms and conditions as it may prescribe, subject to the limitations and conditions provided for in this act: Provided, That all deferred payments and the interest thereon shall be payable in the money prescribed for the payment of principal and interest of the bonds authorized to be issued in payment of said lands by the preceding section and said deferred payments shall bear interest at the rate borne by the bonds. All moneys realized or received from sales or other disposition of said lands or by reason thereof shall constitute a trust fund for the payment of principal and interest of said bonds, and also constitute a sinking fund for the payment of said bonds at their maturity. Actual settlers and occupants at the time said lands are acquired by the government shall have the preference over all others to lease, purchase, or acquire their holdings within such reasonable time as may be determined by said government.

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SEC. 75. That no corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created, and every corporation authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed 1,024 hectares of land; and it shall be unlawful for any member of a corporation engaged in agriculture or mining and for any corporation organized for any purpose except irrigation to be in any wise interested in any other corporation engaged in agriculture or in mining. Corporations, however, may loan funds upon real-estate security and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in the Philippine Islands, and doing business therein, shall be bound by the provisions of this section so far as they are applicable.

33 STAT. 689, p. 692, FEBRUARY 6, 1905.

AMENDMENT.

AN ACT To amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, etc."

Be it enacted, etc., * * *

SEC. 9. That sections 22, 23, 24, 25, 29, 31, 36, 37, 39, 53, and 58 of the act of Congress approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," being provisions of said act respecting mineral lands, are hereby amended by reducing all measurements therein, whether of distance, area or value, to the metric system, to wit, feet to meters, acres to hectares, miles to kilometers, and also dollars to pesos, so that said sections as amended shall read as follows:

NOTE.—The changes directed by this amendment are made in the original sections.

A. NATIVE OPERATION OF PHILIPPINE LANDS RESPECTED.
B. LIMITATIONS OF SECTION 22.
C. MINING CLAIMS LOCATED ON EXISTING CLAIM—EFFECT.
D. OCCUPATION OF MINING CLAIM FOR PERIOD OF STATUTE OF LIMITATIONS.

A. NATIVE OPERATION OF PHILIPPINE LANDS RESPECTED.

Section 16, together with section 45, clearly shows that it was the intention of Congress to respect the native operation of the public lands.

Reavis v. Franza, 215 U. S. 16, p. 25.

Section 45 is to be taken to refer to the conditions as to the Philippine Islands before the United States acquired the sovereignty of the Philippines.

Reavis v. Franza, 215, U. S. 16, p. 22.

B. LIMITATIONS OF SECTION 22.

The limitation of section 22 applies only to claims located after the passage of the act and can not govern as to the size of a claim previously located and held.

Reavis v. Franza, 215 U. S. 16, p. 23.

C. MINING CLAIM LOCATED ON EXISTING CLAIM—EFFECT.

A valid claim can not be located under section 28 where the ground has been already occupied as a mining claim.

Reavis v. Franza, 215 U. S. 16, p. 24.

D. OCCUPATION OF MINING CLAIM FOR PERIOD OF STATUTE OF LIMITATIONS.

Section 45 applies to possession maintained for a sufficient time before and until the statute went into effect.

Reavis v. Franza, 215 U. S. 16, p. 22.

When a person or his grantors have held and worked a claim for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, proof of such possession and working gives a right to a patent in absence of any adverse claim.

Reavis v. Franza, 215 U. S. 16, p. 22.

34 STAT. 23, FEBRUARY 24, 1906.

COAL CLAIMS—PURCHASE.

AN ACT To provide for the purchase of certain coal claims in the Island of Batan in the Philippine Islands.

Be it enacted, etc., That the Secretary of War be, and he is hereby, authorized to purchase the coal claims owned by Messrs. Munoz & Villanueva, lying on the Island of Batan, Philippine Islands, and upon which the War Department now holds an option; and to provide for the purchase of said claims the sum of $50,000 is hereby appropriated out of any money in the Treasury not otherwise appropriated; and the above sum is made immediately available in order that the purchase may be made before the said option expires, to wit, March 1, 1906.

PIPE LINES—REGULATIONS—RIGHT OF WAY.

See Right of way, p. 1188; Sherman Anti-Trust Act, p. 1235.

25 STAT. 438, AUGUST 13, 1888.

OIL, GAS, AND SALT WATER.

AN ACT To authorize the Kentucky Rock Gas Co. to lay pipes across the Ohio and Salt Rivers.

Be it enacted, etc., That the assent of Congress is hereby given to the Kentucky Rock Gas Co. to lay pipes for conducting natural gas, petroleum, or salt water across the Ohio River and Salt River, at such points as may be deemed necessary, between the lower boundary of Bradenburgh, in Meade County, Ky., and the upper boundary of Louisville, in Jefferson County, Ky.: Provided, That said pipes be laid upon or beneath the bed of the river and in such manner as not to interfere with navigation, and under the supervision of the Secretary of War.

29 STAT. 127, 2 SUPP. R. S. 472, MAY 21, 1896.

RIGHT OF WAY—COLORADO AND WYOMING.

AN ACT To grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming.

Be it enacted, etc., That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park is hereby granted to any pipe line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and 25 feet on each side of the center line of the same; also the right to take from the public lands adjacent to the line of said pipe line material, earth, and stone necessary for the construction of said pipe line.

SEC. 2. That any company or corporation desiring to secure the benefits of this act shall, within 12 months after the location of 10 miles of the pipe line, if the same be upon surveyed lands and if the same be upon unsurveyed lands, within 12 months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.

SEC. 3. That if any section of said pipe line shall not be completed within five years after the location of said section the right herein

granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of forfeiture.

SEC. 4. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

33 STAT. 65, MARCH 11, 1904.

RIGHT OF WAY—GRANT BY SECRETARY.

AN ACT Authorizing the Secretary of the Interior to grant right of way for pipe lines through Indian lands.

Be it enacted, etc., That the Secretary of the Interior is hereby authorized and empowered to grant a right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian Reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned until authority therefor has first been obtained from, and the maps of definite location of said lines approved by the Secretary of the Interior: Provided, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe line company: Provided further, That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements can not be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct and shall be subject to his final approval. And where such lines are not subject to state or territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each 10 miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein

contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance and care: Provided, That the rights herein granted shall not extend beyond a period of 20 years: Provided further, That the Secretary of the Interior, at the expiration of said 20 years may extend the right to maintain any pipe line constructed under this act for another period not to exceed 20 years from the expiration of the first right, upon such terms and conditions as he may deem proper.

A. CONGRESS MAY EMPOWER THE SECRETARY TO GRANT RIGHT OF WAY FOR PIPE LINES.

Congress has power to enact a law conferring upon the Secretary of the Interior authority to grant the right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through allotments of minor Creek Indians upon such terms and upon such compensation as may be fixed.

Texas Co. v. Henry, 34 Okla. 342, p. 343.

34 STAT. 584, JUNE 29, 1906.

OIL AND GAS LINES—REGULATIONS.

AN ACT To amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Be it enacted, etc., That section 1 of an act entitled "An act to regulate commerce," approved February 4, 1887 (24 Stat. 379), be amended so as to read as follows:

"SECTION 1. That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act," * * *

See 26 Stat. 209, p. 1235; 31 Stat. 494, p. 522, p. 903.

A. PIPE-LINE ACT.

1. PURPOSE OF ACT.
2. CONSTRUCTION AND APPLICATION OF AMENDMENT.
3. TRANSPORTATION OF OIL—INTERSTATE COMMERCE.
4. PIPE-LINE OWNERS AS COMMON CARRIERS—VALIDITY OF AMENDMENT.
5. OWNERSHIP OF PIPE LINES—NATURE AND RIGHTS.
6. PRIVATE PIPE-LINE OWNERS UNAFFECTED.

1. PURPOSE OF ACT.

This amendatory act was intended to reach a combination of pipe lines whereby the Standard Oil Co. owned the stock of the New York Transit Co., the National Transit Co., and nearly all of the stock of the Ohio Oil Co., the Prairie Oil & Gas Co.,

and was largely interested in the Tide Water Pipe Co., thereby making itself master of the only practicable oil transportation between the oil fields east of California and the Atlantic Ocean, and by reason of which it was able to and did carry much the greater part of the oil between these points.

United States v. Ohio Oil Co., 234 U. S. 548.

2. CONSTRUCTION AND APPLICATION OF AMENDMENT.

The words of this amendatory act in reference to persons and corporations "who shall be considered and held to be common carriers within the meaning and purpose of this act" are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but the words amount to a declaration that the persons or corporations in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

United States v. Ohio Oil Co., 234 U. S. 548.

The provisions of this amendatory act apply to any person engaged in the transportation of oil by means of pipe lines.

United States v. Ohio Oil Co., 234 U. S. 548.

3. TRANSPORTATION OF OIL—INTERSTATE COMMERCE.

The transportation of oil through pipe lines by the Standard Oil Co. and the companies controlled by it and its various subsidiaries is commerce among the states; and the fact that the oil transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

United States v. Ohio Oil Co. 234 U. S. 548.

4. PIPE-LINE OWNERS AS COMMON CARRIERS—VALIDITY OF AMENDMENT.

The effect of this amendment is to change the nature and quality of business of pipeline owners from private to public, by requiring them to share with others the facilities that they have provided for themselves alone and to employ all such facilities in the service of the public; and this must be held something essentially different from and quite beyond the power delegated to Congress to regulate commerce between the States, and a law that in intention and result deprives the owners of private property of its exclusive enjoyment and compels the devotion of such property to public use is invalid, and in contravention of the fifth amendment to the Constitution.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 809.

Congress intended by this amendment to make common carriers of the owners of private pipe lines, who were not common carriers, and who used the respective pipe lines solely for the transportation of their own oil in carrying on their private business, and make such owners subject to the provisions of the original act, and the amendment as applied to such private owners is held to be void for the reason that it deprived them of their property without due process of law, by depriving them of the beneficial use and enjoyment of their property.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 806.
United States v. Ohio Oil Co., 234 Sup. Ct. 548.

This amendatory act is a valid exercise of constitutional power, without doubt, as applied to future pipe lines, and prescribes the conditions upon which they may be used; and it seems equally clear that it is constitutional as to existing pipe lines that are common carriers now in everything but form, where they carry everybody's oil

to market, although they compel outsiders to sell to them before taking it into their pipes; and as applied to present operators and pipe lines the statute practically means no more than that they must give up requiring a sale to themselves before carrying the oil that they now receive.

United States v. Ohio Oil Co., 234 U. S. 548.

The force of this amendatory act is not such that it compels the owners of pipe lines to continue in operation, but it does require them not to continue except as common carriers, and its purpose was to bring within its scope pipe lines that, although not technically common carriers, were carrying oil offered for transportation if the offerers would sell their oil at prices named by the combination.

United States v. Ohio Oil Co., 234 U. S. 548.

5. OWNERSHIP OF PIPE LINES—NATURE AND RIGHTS.

See 33 Stat. 65, p. 1069.

The fact that the ownership and possession of a pipe line enables its owner to transport his oil to a refinery or other market at small cost compared with other means of conveyance, and that other producers find it to their interest to sell the output of their wells to the owners of the pipe line, and conceding that the pipe line gives its owner such command that he is able to control or even fix the selling price of crude oil in a particular field or territory, does not imply that other producers are deprived of anything which rightfully belongs to them because they did not or can not provide themselves with the same means of reaching the market.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 816.

The necessary or natural operation of the intent and meaning of this statute impairs and measureably destroys rights of ownership and use which the Constitution protects from invasion and accomplishes inevitably a taking of property within the meaning and intent of the fifth amendment to the Constitution.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 817.

6. PRIVATE PIPE-LINE OWNERS UNAFFECTED.

The effect of this amendment is to compel the owner of a private pipe line, built upon private right of way and used solely for the transportation of his own oil to open and extend its use to whomsoever may desire its enjoyment, no matter with what resulting inconvenience and injury to himself.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 807.

Congress has no power to compel a private pipe-line owner to become a common carrier of oil merely because his pipe line crosses or is laid along public highways.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 819.

Private pipe lines separately owned by dealers in oil or refiners, and used by them in the private business in which each is separately engaged, can not be termed a monopoly for the purpose of upholding the validity of this amendment.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 815.

The fact that pipe-line companies organized as common carriers in the State of their incorporation does not make them common carriers of oil in other States, where in such States the lines were laid and operated on private rights of way, and where the laws of such State did not require them to transport oil as common carriers.

Prairie Oil & Gas Co. v. United States, 204 Fed. 798, p. 820.

An oil company operating a refinery in one State and oil wells in an adjoining State, with a pipe line connecting the two, and using such pipe line for the sole purpose of

conducting oil from its own wells to its own refinery, is not engaged in the transportation of oil within the meaning of this amendatory act, and is not a common carrier within the meaning of the provisions of the act.

United States v. Ohio Oil Co., 234 U. S. 548.

36 STAT. 236, APRIL 12, 1910.

RIGHT OF WAY—OIL AND GAS—ARKANSAS.

AN ACT To grant right of way over the public domain in the State of Arkansas for oil or gas pipe lines.

Be it enacted, etc., That a right of way through the public lands of the United States in the State of Arkansas is hereby granted for pipe-line purposes to any citizen of the United States or any company or corporation authorized by its charter to transport oil, crude or refined, or natural gas which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proof of organization under the same, to the extent of the ground occupied by the said pipe line and 10 feet on each side of the center line of same.

SEC. 2. That any citizen of the United States, company, or corporation desiring to secure the benefits of this act shall within 12 months after the location of 10 miles of the pipe line, if the same be upon surveyed land, and if the same be upon unsurveyed lands within 12 months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its lines, and upon the approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such land over which such line shall pass shall be disposed of subject to such right of way.

SEC. 3. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

SEC. 4. That if any section of said pipe line shall not be completed within one year after the approval by the Secretary of the Interior of said section, or if any section of said pipe line shall be abandoned or shall not be used for a period of two years, the right of way herein granted as to any uncompleted, abandoned, or unused section of said pipe line shall be forfeited to the extent that the same is not completed or is abandoned or unused at the date of the forfeiture, without further action or declaration on the part of the Government or any proceedings or judgment of any court.

SEC. 5. That if any citizen, company, or corporation taking advantage of the benefits of this act shall violate the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (commonly known as the Sherman antitrust act), or any amendment thereof, the right of way herein granted shall be forfeited without further action or declaration on the part of the Government or any proceedings or judgment of any court.

PRIVATE LAND CLAIMS.

9 STAT. 631, MARCH 3, 1851.

CALIFORNIA—COMMISSION TO SETTLE.

AN ACT To ascertain and settle the private land claims in the State of California.

Be it enacted, etc., That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States. * * *

SEC. 8. And be it further enacted, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within 30 days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

* * * * * * *

SEC. 13. And be it further enacted, That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the district or Supreme Court, and all lands the claim to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said district or Supreme Court, a patent shall issue to the claimant upon his presenting to the General Land Office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same. * * *

SEC. 14. And be it further enacted, That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been

granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the 7th day of July, 1846; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said 7th July, 1846, being duly proved, shall be prima facie evidence of a grant to such corporation or to the individual under whom the said lotholders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village. * * *

A. PURPOSE OF ACT.
B. MINERALS PASSED TO UNITED STATES.

A. PURPOSE OF ACT.

The object of this act is to ascertain and settle or establish private land claims in California, and it does nor restrict the operation of patents issued, and such a patent passes to the patentee all interest of the United States and invests the patentee with the ownership of the precious metals which the land may contain.

Moore v. Smaw, 17 Cal. 199, p. 223.

B. MINERALS PASSED TO UNITED STATES.

The gold and silver which passed by the cession from Mexico were not held by the United States in trust for the future State and the ownership of them is not an incident of any right of sovereignty, and such minerals were held by the United States in the same manner as they held any other public property which they acquired from Mexico.

Moore v. Smaw, 17 Cal. 199, p. 223.

12 STAT. 71, JUNE 21, 1860.

NEW MEXICO—CONFIRMATION OF PRIVATE CLAIMS.

AN ACT To confirm certain private land claims in the Territory of New Mexico.

Be it enacted, etc., That the private land claims in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, and in his letter to the Commissioner of the General Land Office, of the 12th of January, 1858, designated as Nos. 1, 3, 4, 6, 8, 9, 10, 12, 14, 15, 16, 17, and 18, and the claim of E. W. Eaton, not entered on the corrected list of numbers, but standing on the original docket and abstract returns of the surveyor general as No. 16, be, and they are hereby, confirmed: * * *

SEC. 6. And be it further enacted, That it shall be lawful for the heirs of Luis Maria Baca, who make claim to the said tract of land as is claimed by the town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number. * * *

A. PRIVATE LAND CLAIMS.
B. BACA HEIRS.

A. PRIVATE LAND CLAIMS.

1. PURPOSE AND EXTENT OF GRANT—MINERAL LANDS.

By this act Congress confirmed various claims amounting to millions of acres, and without any reservation of mines then known, or to be thereafter discovered within their limits, though under Spanish, if not under Mexican law, all minerals were perpetually reserved from such grant.

Shaw v. Kellogg, 170 U. S. 312, p. 334.

By this statute Congress did not intend to grant any mines or mineral lands, or lands then known to contain mineral, neither did Congress intend that the grant should be rendered nugatory by any future discovery of mineral.

Shaw v. Kellogg, 170 U. S. 312, p. 332.

B. BACA HEIRS.

1. SELECTION OF NONMINERAL LANDS.
2. TIME FOR SELECTING NONMINERAL LANDS.
3. NONMINERAL CHARACTER OF LANDS SELECTED—BURDEN OF PROOF.
4. KNOWN MINERAL LANDS EXCLUDED.
5. MINERAL CHARACTER OF LANDS ONCE DETERMINED—EFFECT.

1. SELECTION OF NONMINERAL LANDS.

The Baca heirs under this grant are entitled to select an equal quantity of vacant land nonmineral; and lands vacant and not known to contain mineral at the time of selection pass under this act, whether subsequently discovered to be mineral or not.

Kern Oil Co. v. Clarke, 30 L. D. 550, p. 564.
See Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

The grant made by this section was in lieu of certain specified lands claimed by the Baca heirs, and they were authorized to select in lieu thereof an equal amount of land in the vicinity of Las Vegas, but they could not select lands already occupied by others, but the lands selected must be vacant and they must not be known to contain mineral.

Shaw v. Kellogg, 170 U. S. 312, p. 332.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 16.
Baca Float No. 3, 29 L. D. 44, p. 52.
Kern Oil Co. v. Clarke, 30 L. D. 550.
Kern Oil Co. v. Clarke, 31 L. D. 288, p. 298.
See Gray Eagle Oil Co. v. Clarke, 31 L. D. 303.

This act permitted the Baca heirs to select lands in lieu of those claimed by the town of Las Vegas, but such selections were to be made from lands not mineral.

Baca Float No. Three, In re, 30 L. D. 497, p. 499.
See Baca Float No. Three, In re, 29 L. D. 44.

A location and selection made by a claimant of lands known to be mineral may be vacated, and the right to select other land in lieu thereof will be barred unless made within the time limited by the act.

Baca Float, In re, 5 L. D. 705, p. 707.

2. TIME FOR SELECTING NONMINERAL LANDS.

The right to select nonmineral lands under this grant is limited to three years, and if not exercised within this time the right no longer exists.

Shaw v. Kellogg, 170 U. S. 312, p. 332.
Baca Float No. 3, In re, 29 L. D. 44, p. 50.

Where lands selected and located prior to June 21, 1863, that were not mineral or not known to be mineral according to the provisions of this act, the department has no power to cancel such selection and permit a relocation of the claim.

Baca Float, In re, 5 L. D. 705, p. 707.

The time with reference to which the character of the land selected, whether vacant and nonmineral, is to be determined is the date of the selection and not the date of the approval of the survey of the claim; and the duty of investigating and determining in the first instance whether the land selected is vacant and nonmineral as of that date rests upon the surveyor general.

Baca Float No. Three, In re, 30 L. D. 497, p. 499.

3. NONMINERAL CHARACTER OF LANDS SELECTED—BURDEN OF PROOF.

The burden of proof is upon a claimant under this grant to show that the lands selected or located are nonmineral lands, as no title to mineral lands can vest under this act, and the department may at any time before title passes from the Government require the claimant to show the nonmineral character of the land, though the character of the land was not known to the claimant at the date of selection or location, and if the proof shows that the land embraced in the location is mineral, the mineral land must be segregated from the nonmineral land by survey, and the claimant will be entitled to such part of the location as is shown to be nonmineral.

Baca Float, In re, 12 L. D. 676, p. 680.

Under this act the surveyor general was authorized to locate only vacant, nonmineral land, and unless the contrary appeared it would be presumed from the act of locating that the surveyor general determined that the land so located was not mineral, and the land was in fact so returned by him, but the act did not intend that if at any subsequent time mineral should be discovered the title should be unsettled.

Baca Claim, In re, 6 C. L. O. 18.

4. KNOWN MINERAL LANDS EXCLUDED.

All lands ascertained by the surveyor general to have been occupied, or known to be mineral, at the date of the selection under this grant, must be excluded from the survey as not subject to the grant.

Baca Float No. 3, In re, 29 L. D. 44, p. 54.

5. MINERAL CHARACTER OF LANDS ONCE DETERMINED—EFFECT.

The question as to the mineral or nonmineral character of the land in controversy under this act has been passed upon by competent authority and the title passed from the Government and vested in private individuals, and the Land Department has no authority to reopen the question, and the land can no longer be regarded as a part of the public domain.

Baca Claim, In re, 6 C. L. O. 18.

12 STAT. 836, APRIL 11, 1860.

PORTERFIELD HEIRS—LOCATION OF LANDS.

AN ACT For the relief of the legal representatives of Charles Porterfield, deceased.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and required to issue to * * * executors of the last will and testament of Robert Porterfield, deceased, a number of warrants equal to 6,133 acres of land, according to the usual subdivisions of the public survey, in quantities not less than 40 acres; to be by them located on any of the public lands which have been or may be surveyed, and which have not been otherwise appropriated at the time of such location within any of the States or Territories of the United States where the minimum price for the same shall not exceed $1.25 per acre. * * *

A. PORTERFIELD SCRIP—LOCATION.

Porterfield Scrip can not be located on mineral lands.

Porterfield Scrip, In re, 3 C. L. O. 83.

26 STAT. 854, p. 860, 1 SUPP. R. S. 917, p. 922, MARCH 3, 1891.

SETTLEMENT—MINES AND MINERALS EXCEPTED.

AN ACT To establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories.

Be it enacted, etc., * * *

SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

* * * * * * *

Third. No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all the patents issued under this act. But no such mines shall be worked on any property confirmed under this act without the consent of the owner of such property until specially authorized thereto by an act of Congress hereafter passed.

A. PURPOSE OF ACT.

1. ALLOWANCE OF PRIVATE LAND CLAIMS.
2. MINERAL LANDS EXCEPTED—EFFECT.

1. ALLOWANCE OF PRIVATE LAND CLAIMS.

By this act Congress afforded the holders of small tracts not exceeding 160 acres an inexpensive and easy method of acquiring title by filing their claims with the surveyor general and making proof of their citizenship, and the act contains no provision whatever restricting such claims to nonmineral lands; but an allowance or confirma-

tion of a claim should not confer any rights or title to any gold, silver, or quicksilver mines or minerals unless the grant claimed effected the donation or sale of such mines or mineral.

Santa Fe Pac. R. Co., In re, 39 L. D. 135, p. 137.

2. MINERAL LANDS EXCEPTED—EFFECT.

While no express exception of mineral lands is necessary to exclude them from an ordinary grant, yet where Congress undertakes to except certain minerals, the presumption is that all other minerals not named are not excepted.

Santa Fe Pac. R. Co., In re, 39 L. D. 135, p. 137.

By this act Congress provided an entirely new method of ascertaining the rights of claimants to Spanish or Mexican land grants.

Lockhart v. Wills, 9 N. Mex. 344, p. 350.

This act provides that no minerals shall pass under ordinary Mexican grants of land unless the grant effects the donation or sale of mines or minerals to the grantee, but the mines and minerals remain the property of the United States.

Lockhart v. Johnson, 181 U. S. 516, p. 524.

Section 13 makes it plain that so far as regards mineral land there was no intention after the passage of this act that they should be reserved by a mere claim in a Mexican grant of ordinary land.

Lockhart v. Johnson, 181 U. S. 516, p. 524.

This act continues in force the reservation of land embraced within the Mexican or Spanish grants.

Lockhart v. Willis, 9 N. Mex. 344, p. 351.

PUBLIC AND MINERAL LANDS—MISCELLANEOUS.

ORDINANCE OF 1785, MAY 20, 1785.

MINERAL LANDS—DISPOSAL.

AN ORDINANCE For ascertaining the mode of disposing of lands in the western territory.

Be it ordained by the United States in Congress assembled, That the territory ceded by individual States to the United States which has been purchased of the Indian inhabitants shall be disposed of in the following manner:

* * * * * * *

The lines shall be measured with a chain, shall be plainly marked by chaps on trees, and exactly described on a plat, whereon shall be noted by the surveyor, at their proper distances, all mines, salt springs, salt licks, and mill seats, that shall come to his knowledge; and all water courses, mountains, and other remarkable and permanent things over or near which such lines shall pass, and also the quality of the lands.

* * * * * * *

There shall be reserved the lot No. 16 of every township for the maintenance of public schools within the said township; also, one-third part of all gold, silver, lead, and copper mines, to be sold or otherwise disposed of, as Congress shall hereafter direct.

1 Laws Relating to Public Lands 11, pp. 12, 13.

A. SALE OF PUBLIC LANDS—RESERVATION OF MINERALS.

This ordinance dedicated section 16 for the maintenance of public schools and reserved from every sale of public land one-third part of all gold, silver, lead, and copper mines within the township or lot sold; but no further reservations were made of gold, silver, or copper mines until the act of March 1, 1847 (9 Stat. 146).

Cooper v. Roberts, 59 U. S. (18 How.) 173, p. 178.
Alabama, In re, 15 C. L. O. 7, p. 8.
See Shoemaker v. United States, 147 U. S. 282.

From the date of this ordinance providing for the disposal of the public lands in the western Territories and reserving the interest of the Government in the minerals therein, through all the acts of Congress in any way affecting the public domain, this interest in the mineral wealth of the public lands has been carefully guarded, and special legislation, as applicable to mineral lands, in contradistinction to all other lands, enacted for its protection and preservation; and the present mining laws clearly contemplate the disposal of such lands in small quantities to encourage and induce prospectors to make discoveries.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 293.

2 STAT. 57, APRIL 16, 1800.

COPPER MINES—INDIAN TITLE.

A RESOLUTION Respecting the copper mines on the south side of Lake Superior.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be authorized to employ an agent, who shall be instructed to collect all material information relative to the copper mines on the south side of Lake Superior, and to ascertain whether the Indian title to such lands as might be required for the use of the United States, in case they should deem it expedient to work the said mines, be yet subsisting, and if so, the terms on which the same can be extinguished. And that the said agent be instructed to make report to the President in such time as the information he may collect may be laid before Congress at their next session.

9 STAT. 146, MARCH 1, 1847.

LAND DISTRICT—MICHIGAN—SALE OF MINERAL LANDS.

AN ACT To establish a land office in the northern part of Michigan and to provide for the sale of mineral lands in the State of Michigan.

Be it enacted, etc., That all that portion of the public lands in the State of Michigan lying north of the boundaries of the Saginaw and Grand River land districts in said State, commonly called the Northern Peninsula of the State of Michigan with the islands in Lakes Superior, Huron, and Michigan, * * * are hereby, included in a land district, to be called the Lake Superior land district. * * *

SEC. 2. That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to sale, giving six months' notice of the times and places of sales in such newspapers of general circulation, in the several States, as he may deem expedient, with a brief description of the lands to be offered; showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of public lands, excepting and reserving from such sales section 16 in each township for the use of schools, and such reservations as the President may deem necessary for public uses.

SEC. 3. That all those persons who are in possession, by actual occupancy, of any portion of the district described in the first section of this act, under authority of a lease from the Secretary of War, for the purpose of mining thereon, and who have fully complied with all the conditions and stipulations of said lease, may enter and purchase the same at any time during the continuance of such lease, to the extent of such lease, and no less, by paying to the United States therefor at the rate of $2.50 per acre: Provided, That said

entry and purchase shall be made to include the original survey of such lease, as near as may be, conforming to the lines of the public surveys of sections and subdivisions thereof. And all those persons who are in possession, by actual occupancy, of any of said lands, for mining purposes, under authority of a written permit from the Secretary of War, and who have visible land marks and muniments as boundaries thereon, and who have, in all other respects, complied with the conditions and stipulations contained in such permit, may enter and purchase the same, to the extent of the tract selected by them and reported to the Secretary of War, as required by said permit, and no less, in the same manner as those who hold under leases, and at the same price: Provided, Such entry and purchase be made before the day said lands shall be offered for sale by order of the President. And all those persons who shall be in possession, by actual occupancy, of a mine or mines actually discovered before the passage of this act, and who shall pay the same per centum of rents as those who hold under leases, as aforesaid, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines discovered and occupied as aforesaid, by them, by paying to the United States the same price, and at the same time, as required of those who hold under permits aforesaid, and all rents accruing from such lessees or occupants shall be paid and delivered to such officers of the Government as the Secretary of the Treasury shall direct: Provided, That prior to any such purchase being made under the provisions of this section, proof of possession and occupancy, as aforesaid, of the mine or mines claimed, shall be made to the register and receiver of the land district, together with the evidence of the payment of all rents due the United States, agreeably to such rules as may be prescribed by the Secretary of the Treasury for that purpose, which register and receiver shall each be entitled to receive $1 for his services therein: Provided, That an appeal from the decision of the register and receiver to the Secretary of the Treasury may be had, under such regulations as the said Secretary may prescribe. And if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be so divided by legal subdivisions as to give to each the discovery claimed by him.

SEC. 4. That the said mineral lands shall be offered for sale in quarter sections, and no bid shall be received at a less rate than $5 per acre; and if such lands shall not be sold at public sale at such price, they shall thereafter be entered at private sale at that price: Provided, That no legal division or subdivision of any of said lands upon which there may be an outstanding lease or leases from the Secretary of War unexpired or undetermined, and which is actually occupied for mining purposes, and the occupants of which have complied with all the requisites of such lease or leases, and continue to perform the same, shall be sold until after the determination of such lease or leases by efflux of time, voluntary surrender, or other legal extinguishment thereof, except in such cases as are provided for in the third section of this act, and the lessees respectively shall be entitled to the privileges secured by said section under the voluntary surrender of the lease or leases held by them.

SEC. 5. That the management and control of the mineral lands shall be transferred from the War Department, and placed under

the jurisdiction and control of the Treasury Department; and all books, maps, papers, instruments, and other property procured, to be used and employed in the management, survey, exploring, or conducting of said mineral lands, by the War Department, shall be delivered over and made subject to the disposition of the Secretary of the Treasury.

* * * * * * *

A. MINERAL LANDS.
B. LEASE OF MINERAL LANDS—RIGHTS CONFERRED, p. 1084.

A. MINERAL LANDS.

1. ORDER OF SALE—EFFECT ON MINERAL AND SCHOOL LANDS.
2. GEOLOGICAL SURVEY ORDERED.
3. IRON ORE—LANDS NOT MINERAL.

1. ORDER OF SALE—EFFECT ON MINERAL AND SCHOOL LANDS.

This act separated, for some purposes, the mineral from the public lands.

Keystone Consol. Min. Co. v. California, Copp. Min. Lands, 101, p. 105.

By this act all the mineral lands within the district, reported by the Secretary of the Treasury, were taken out of the operation of the general law for the disposal of the public lands in pursuance of the policy, reserving from the ordinary mode of disposing of public lands those that contain valuable mines, salt springs, etc., but this reservation did not include section 16 reserved for school purposes.

Cooper v. Roberts, 59 U. S. 173, p. 177.
Affirming Cooper v. Roberts, 6 Fed. Cas. 487.
See Alabama, In re, 6 L. D. 693.

This statute authorizing the sale of mineral lands does not include section 16 reserved for school purposes, nor does it withdraw the mineral lands from the compact with Michigan.

Cooper v. Roberts, 59 U. S. (18 How.) 173, p. 180.
Reversing Cooper v. Roberts, 6 Fed. Cas. 487, p. 488. (Changed by statute.)
See Alabama, In re, 6 L. D. 693.

2. GEOLOGICAL SURVEY ORDERED.

By this section the Secretary of the Treasury is required to cause to be made a geological survey of the entire land district, in which shall be specially noted the extent and quality of the minerals and the distance from market, and all lands not represented to be mineral except a reservation of section 16, and all such lands were directed to be sold on six months' notice.

Cooper v. Roberts, 6 Fed. Cas. 487, p. 488.

Until the survey of the township and the designation of the specific sections, the right of the State rests in contract only and no absolute right or title vests in lands that are mineral in character.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 104.

3. IRON ORE—LANDS NOT MINERAL.

The phrase "or other valuable ores" in this section should not be so construed as to embrace lands containing iron ore, as such lands are not to be considered as mineral lands.

Iron Ore Lands, In re, 5 Op. Atty. Genl. 247.

B. LEASE OF MINERAL LANDS—RIGHTS CONFERRED.

A lease to a mining company under this statute did not confer a right upon such company or its assignee to enter and obtain a patent for section 16.

Cooper v. Roberts, 59 U. S. (18 How.) 173, p. 180.

The execution of a lease by the Secretary of War to a mineral claimant with a right of renewal, and a renewal in accordance with its terms, is not a legal impediment preventing the title from vesting in the State under this act.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 104.

9 STAT. 179, MARCH 3, 1847.

LAND DISTRICT—WISCONSIN—MINES AND MINERAL LANDS.

AN ACT To create an additional land district in the Territory of Wisconsin.

Be it enacted, etc., * * *

SEC. 2. And be it further enacted, That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to sale, giving six months' notice of the times and places of sales in such newspapers of general circulation in the several States as he may deem expedient, with a brief description of the lands to be offered; showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district, not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of the public lands, excepting and reserving from such sales section 16 in each township for the use of schools, and such reservations as the President shall deem necessary for public uses.

SEC. 3. And be it further enacted, That every person or persons who shall be in possession, by actual occupancy, of a mine or mines, actually discovered previous to the passage of this act, and who shall pay the same rents as those who hold under leases from the Secretary of War, and which rents accruing from such occupants and lessees shall be paid and delivered to such officer of the Government as the Secretary of the Treasury shall direct, shall be entitled to purchase the lands on which the same is or are situated at any time prior to the day of sale fixed by the President, in legal subdivisions, not exceeding in the aggregate 160 acres, to include such mine or mines, paying to the United States therefor at the rate of $5 per acre: Provided, That, prior to any entry being made under the provisions of this section, proof of possession and occupancy as aforesaid of the mine or mines claimed shall be made to the register and receiver of the land district, together with the evidence of the payment of all rents due the United States, agreeably to such rules as may be prescribed by the Secretary of the Treasury for that purpose, which register and receiver shall each be entitled to receive $1 for his services therein: Provided, That an appeal from the decision of the register and receiver to the Secretary of the Treasury may be had, under such regulations as the said Secretary may prescribe. And if two or more

persons are in possession of the same quarter section, the first occupant shall be entitled to a preference, unless the same can be so divided by legal subdivisions as to give to each the discovery claimed by him.

SEC. 4. And be it further enacted, That, the said mineral lands shall be offered for sale in subdivisions of quarter quarter sections, and no bid shall be received at a less rate than $5 per acre; and if such lands shall not be sold at public sale, they shall be subject to entry at private sale at that price: Provided, That no legal division or subdivision of any of said lands, upon which there may be an outstanding lease or leases from the Secretary of War unexpired or undetermined, and which is actually occupied for mining purposes, and the occupants of which have complied with all the requisites of such lease or leases, and continued to perform the same, shall be sold until after the determination of such lease or leases by efflux of time, voluntary surrender, or other legal extinguishment thereof, except in such cases as are provided for in the third section of this act; and the lessees, respectively, shall be entitled to the privilege secured by said section upon the voluntary surrender of the lease or leases held by them.

SEC. 5. And be it further enacted, That the management and control of the mineral lands shall be transferred from the War Department, and placed under the jurisdiction and control of the Treasury Department, and all books, maps, papers, instruments, and other property procured to be used and employed in the management, survey, exploring, or conducting of said mineral lands by the War Department, shall be delivered over and made subject to the disposition of the Secretary of the Treasury.

* * * * * * *

See 9 Stat. 146, p. 1081.

9 STAT. 452, SEPTEMBER 9, 1850.

ENABLING ACT—CALIFORNIA—PUBLIC LANDS.

AN ACT For the admission of California into the Union.

Be it enacted, etc., That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

* * * * * * *

SEC. 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall nonresident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost,

or duty therefor: Provided, That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

A. DISPOSAL OF MINERAL LANDS.

Aside from this statute the General Government for several years remained a passive spectator of the settlement upon and the development of its mineral lands in California, but the right of the United States to such lands and its authority to dispose of the same has never been questioned.

Lee Doon v. Tesh, 68 Cal. 43, p. 46.

It has been the uniform policy of the Government to reserve saline lands from disposition and sale.

Elliott v. Southern Pac. R. Co., 35 L. D. 149, p. 150.
See New Mexico, In re, 31 L. D. 389, p. 390.

9 STAT. 472, SEPTEMBER 28, 1850.

MINERAL LANDS—PRICE REDUCED—MICHIGAN AND WISCONSIN.

AN ACT To reduce the minimum price of the mineral lands in the Lake Superior district in Michigan and the Chippewa district in Wisconsin.

Be it enacted, etc., That the mineral lands in the Lake Superior district in Michigan and in the Chippewa district in Wisconsin, shall be offered for public sale in the same manner, and be subject to the same minimum price, and the same rights of preemption as the other public lands of the United States; and such portions of the act of March 1, 1847, "to establish a land office in the northern part of Michigan, and to provide for the sale of the mineral lands in the State of Michigan," and of the act of March 3, 1847, "To create an additional land district in the Territory of Wisconsin, and for other purposes," as are inconsistent with the provisions of this act, shall be, and the same are hereby, repealed: Provided, however, That the right given by those acts of March 1 and 3, 1847, to lessees, occupants, and permittees, to enter to the extent of their leases and permits, and no less, shall not be considered as impaired by this act; but said lessees, occupants, and permittees shall be authorized to enter the land covered by their leases, occupancy, and permits, respectively, as therein provided, at the minimum price fixed by this act.

SEC. 2. That the holder of a lease or permit covering more than one full section of the mineral lands, as aforesaid, shall be entitled, on the surrender and annulment of said lease or permit at the proper land office, to purchase, if he shall elect to do so, one full section, and no more, of the land covered by said lease or permit, at a minimum price of $2.50 per acre.

A. PURPOSE AND EFFECT OF ACT.
B. RIGHTS OF LESSEES.

A. PURPOSE AND EFFECT OF ACT.

This act abrogated such of the clauses of the act of 1847 (9 Stat. 146) as distinguished the mineral from other public lands and placed them alike under the ordinary system for the disposal of the public domain, but reserved to lessees and occupants the privileges conferred by the former act.

Cooper v. Roberts, 59 U. S. 173, p. 180.

By this act Congress ordered the mineral lands in the Lake Superior and Chippewa districts to be offered at public sale the same as other lands.

Tucker v. Florida R., etc., Co., 19 L. D. 414, p. 415.

B. RIGHTS OF LESSEES.

The rights of a lessee of mineral lands under this statute depend entirely upon the validity of the lease and the protection accorded to the lessee under the act of 1847 and a lessee whose lease had expired could claim no right under this act.

Cooper v. Roberts, 59 U. S. 173, p. 181.
See Cooper v. Roberts, 6 Fed. Cas. 487.

9 STAT. 496, p. 500, SEPTEMBER 27, 1850.

SURVEYOR GENERAL—OREGON—SALINES AND MINERALS.

AN ACT To create the office of surveyor general of the public lands in Oregon, and to provide for the survey, etc.

Be it enacted, etc., That a surveyor general shall be appointed for the Territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the Territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of the Ohio, except as hereinafter provided.

* * * * * * *

SEC. 14. That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the President of the United States, for forts, magazines, arsenals, dock yards, and other needful public uses, shall be reserved and excepted from the operation of this act: Provided, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

12 STAT. 409, MAY 30, 1862.

PUBLIC SURVEYS—PREEMPTION RIGHTS TO UNSURVEYED LANDS.

AN ACT To reduce the expenses of the survey of public lands in the United States.

Be it enacted, etc., That contracts for the survey of the public lands shall not become binding upon the United States until approved by the Commissioner of the General Land Office, except in such cases as said commissioner shall otherwise specially order.

* * * * * * *

SEC. 7. And be it further enacted, That in regard to settlements which by existing laws are authorized in certain States and Territories upon unsurveyed lands, which privilege is hereby extended to California, the preemption claimant shall be, and is hereby, in all

cases, required, from and after September 1, 1862, to file his declaratory statement within three months from the date of the receipt at the district land office of the approved plat of the township embracing such preemption settlement: Provided, The provisions of this section shall not be held to authorize preemption and settlement of mineral lands, which are hereby exempted from the provisions of this act. * * *

A. PREEMPTION RIGHTS EXTENDED—MINERAL LANDS EXCEPTED.

While this statute extended the preemption rights to unsurveyed lands in California it expressly excepted mineral lands.

Schofield Patent, In re, Copp's Min. Dec. 17.

12 STAT. 413, JUNE 2, 1862.

LAND OFFICE—COLORADO—PREEMPTION RIGHTS.

AN ACT To establish a land office in Colorado Territory, etc.

Be it enacted, etc., That all the lands belonging to the United States to which the Indian title has been or shall be extinguished shall be subject to the operations of the preemption act of September 4, 1841, and under the conditions, restrictions, and stipulations therein mentioned: Provided, however, That when unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within 6 months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within 12 months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto, provided said notices may be filed with the surveyor general, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose.

A. MINERAL OR INCLOSED LANDS NOT SUBJECT TO PREEMPTION.

Mineral land, or a mining claim, is not subject to preemption where it is already in the possession of another.

Field v. Grey, 1 Ariz. 404, p. 406.
See Atherton v. Fowler, 96 U. S. 513.
Hosmer v. Wallace, 97 U. S. 575.

A valid right of preemption can not be made by a forcible intrusion upon land cultivated, inclosed, and peaceably occupied by another.

Atherton v. Fowler, 96 U. S. 513, pp. 517, 520.
Belk v. Meagher, 104 U. S. 279, p. 287.

A valid right of preemption may be secured by a peaceable entry on lands which had not been inclosed or improved.

Belk v. Meagher, 104 U. S. 279, p. 287.

This act expressly provides that no mineral lands shall be located or granted under its provisions, and parties whose rights were initiated under this act will be permitted to receive patents for their claims upon full compliance with the law, although coal may have been discovered on the tracts claimed by them.

Yoakum, In re, 1 C. L. O. 3.

13 STAT. 440, p. 441, FEBRUARY 27, 1865.

POSSESSION—MINING TITLE—RECOVERY.

AN ACT Providing for a district and a circuit court of the United States for the District of Nevada, etc.

Be it enacted, etc., * * *

SEC. 9. And be it further enacted, That no possessory action between individuals in any of the courts of the United States for the recovery of any mining title shall be affected by the fact that the paramount title to the land on which such mines are, is in the United States, but each case shall be adjudged by the law of possession.

A. FORCE AND EFFECT OF ACT.

1 COMMON LAW NATURE OF ACT—POSSESSORY RIGHT.
2 MINING TITLE—MEANING.
3 POSSESSORY ACTION—PARAMOUNT TITLE OF UNITED STATES.

1. COMMON-LAW NATURE OF ACT—POSSESSORY RIGHT.

The Supreme Court of the United States has recognized a sort of common law of the miners existing in unorganized territory, and that the Territorial legislature of Nevada has recognized by statute the validity and binding force of the rules, regulations, and customs of the mining districts, and that under the implied sanction of the National Government vast mining interests have grown up. The court admits that this statute is a recognition by Congress of the fact that there may be a possessory right to a mining claim, the value of which may be estimated in money, though the public land where the claim exists has never been surveyed and brought in the market.

Sparrow v. Strong, 70 U. S. (3 Wall.) 97.
Del Monte Min., etc., Co. v. Last Chance Min., etc. Co., 171 U. S. 55, p. 62.

From the discovery of gold in California to the passage of this act, there was no national legislation upon the subject of the western gold-bearing mineral lands.

Price v. McIntosh, 1 Alaska 286, p. 212.

2. MINING TITLE—MEANING.

The term "mining title" used in this statute means the title which the miner obtains by his discovery and location, followed by a compliance with the statutory regulations to preserve the right of possession, and in possessory actions between persons the case shall be adjudged by the law of possession, though the paramount title is in the United States.

Gillis v. Downey, 85 Fed. 483, p. 486.

3. POSSESSORY ACTION—PARAMOUNT TITLE OF UNITED STATES.

This act provides that no possessory action between individuals in the courts of the United States for the recovery of mining titles shall be affected by the fact that the legal title is in the United States.

Belk v. Meagher, 104 U. S. 279, p. 284.
Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 61.

This act only recognized the right of litigants to maintain suits for the possession of mineral lands without regard to the paramount ownership of the United States.

Price v. McIntosh, 1 Alaska 286, p. 292.

14 STAT. 66, p. 67, JUNE 21, 1866.

HOMESTEAD ACT—ALABAMA, ARKANSAS, FLORIDA, MISSISSIPPI, AND LOUISIANA—MINERAL LANDS EXCEPTED.

AN ACT For the disposal of the public lands for homestead actual settlement in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida.

Be it enacted, etc., That from and after the passage of this act all the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida shall be disposed of according to the stipulations of the homestead law of May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain" (12 Stat. 392), and the act supplemental thereto, approved March 27, 1864 (13 Stat. 35), but with this restriction, that until the expiration of two years from and after the passage of this act, no entry shall be made for more than a half-quarter section, or eighty acres; and in lieu of the sum of $10 required to be paid by the second section of said act, there shall be paid the sum of $5 at the time of the issue of each patent; and that the public lands in said States shall be disposed of in no other manner after the passage of this act: Provided, That no distinction or discrimination shall be made in the construction or execution of this act on account of race or color: And provided further, That no mineral lands shall be liable to entry and settlement under its provisions.

14 STAT. 218, JULY 23, 1866.

MINERAL LANDS—TITLE—CALIFORNIA.

AN ACT To quiet land titles in California.

Be it enacted, etc., That in all cases where the State of California has heretofore made selections of any portion of the public domain in part satisfaction of any grant made to said State by any act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are, confirmed to said State: Provided, That no selection made by said State contrary to existing laws shall be confirmed by this act for lands to which any adverse preemption, homestead, or other right has, at the date of the passage of this act, been acquired by any settler under the laws of the United States, or to any lands which have been reserved for naval, military, or Indian purposes by the United States, or to any mineral lands, or to any land held or claimed under any valid Mexican or Spanish grant, or to any land which, at the time of the passage of this act, was included within the limits of any city, town, or village, or within the county of San Francisco: And provided further, That the State of California shall not receive under this act a greater quantity of land for school or improvement purposes than she is entitled to by law.

* * * * * * *

SEC. 7. And be it further enacted, That where persons in good faith, and for a valuable consideration, have purchased lands of Mexican grantees or assigns, which grants have subsequently been rejected, or where the lands so purchased have been excluded from the final survey of any Mexican grant, and have used, improved, and continued in the actual possession of the same as according to

the lines of their original purchase, and where no valid adverse right or title (except of the United States) exists, such purchasers may purchase the same, after having such lands surveyed under existing laws, at the minimum price established by law, upon first making proof of the facts as required in this section, under regulations to be provided by the Commissioner of the General Land Office, joint entries being admissible by coterminous proprietors to such an extent as will enable them to adjust their respective boundaries: Provided, That the provisions of this section shall not be applicable to the city and county of San Francisco: Provided, That the right to purchase herein given shall not extend to lands containing mines of gold, silver, copper, or cinnabar: Provided, That whenever it shall be made to appear by petition from the occupants of such land that injury to permanent improvements would result from running the lines of public surveys through such permanent improvements, the Commissioner of the General Land Office may recognize existing lines of subdivisions.

A. STATE SELECTIONS CONFIRMED.
B. MEXICAN TITLES CONFIRMED.
C. MEXICAN GRANTS, p. 1092.
D. MEXICAN GRANTEES OR ASSIGNS, p. 1092.

A. STATE SELECTIONS CONFIRMED.

See 10 Stat. 244, p. 1257.

Section 1 confirms certain selections made by the State, but provides that no selection made by the State contrary to existing laws shall be confirmed by the act. and excludes also mineral lands.

United States v. Mullan, 10 Fed. 785, p. 788.

This act provides a method of construing the act of March 3, 1853 (10 Stat. 244), with reference to the right of California to select lands in lieu of the sixteenth and thirty-sixth sections.

California, In re, Copp's Min. Lands 224.

The title to land in sections 16 and 36 did not pass to the State if such land at the date of survey was recognized and regarded as mineral.

California v. Poley, 4 C. L. O. 18.

A selection of land under this act by the State of California and sold in good faith, prior to the passage of this act, is valid and the title good, if such lands were not known to be mineral at the date when the act confirming such selection became a law.

Polack, In re, 8 C. L. O. 189, p. 191.

B. MEXICAN TITLES CONFIRMED.

As Congress was not asked to make an original grant it only intended to authorize a patent carrying to the grantee such title and interest as he held from the Mexican Government at the time of the cession, and such as he could rightfully have asked the Mexican Government, under its laws, to protect, and that Government would not have protected him in the possession of valuable mines of gold and silver, and Congress did not intend to do more than the Mexican Government would have done to the grantee.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 300.

The intention of Congress by this confirmatory act was not to confirm the mineral grant alleged to have been made to Moradillos, but to confirm the land granted which had been sent forward for approval.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 298.

This is not an act to grant the person named therein a new thing or right, but to recognize and confirm an old one, for Congress was bound under the treaty of Guadalupe Hidalgo to protect the grantee in existing rights, but was under no obligation to give him an additional one.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 297.

C. MEXICAN GRANTS.

1. MINERAL LANDS EXCLUDED.

A person is not entitled to enter or locate a mining claim in such Mexican grants, as the mineral lands are expressly excepted from the operation of this act.

McGarrahan v. New Idria Min. Co., 3 L. D. 422, p. 423.

This act of preemption did not include the minerals in the lands therein referred to, and the confirmation by Congress was of such title to the lands therein mentioned as had been conveyed by the Government of Mexico and did not confer upon the grantee the title to mines therein contained.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 293.

D. MEXICAN GRANTEES OR ASSIGNS.

1. IMPROVED LANDS WITHDRAWN FROM PREEMPTION.
2. PROOF TO OBTAIN TITLE—ABSENCE OF MINERALS.

1. IMPROVED LANDS WITHDRAWN FROM PREEMPTION.

This act withdrew from the general operation of the preemption laws lands continuously possessed and improved by a purchaser under a Mexican grant, but which was subsequently rejected, and gave to such purchaser, to the exclusion of all other claimants, the right to obtain title.

Hosmer v. Wallace, 97 U. S. 575, p. 581.

This act was passed to meet the hardships arising from the rejection of grants supposed to be valid and the instances where lands had been purchased and improved and were excluded by the surveys from the tracts confirmed.

Hosmer v. Wallace, 97 U. S. 575, p. 581.

2. PROOF TO OBTAIN TITLE—ABSENCE OF MINERALS.

A purchaser from an alleged Mexican grantee is not entitled to a deed from the Government unless he alleges and proves that the lands do not contain mines of gold, silver, copper, or cinnabar.

Secretary v. McGarrahan, 76 U. S. (9 Wall.) 298, p. 310.
McGarrahan v. New Idria Min. Co., 3 L. D. 422, p. 423.

In a contest for lands acquired under this section it is necessary for a claimant to aver and prove that the lands did not contain mines of gold, silver, copper, or cinnabar, and he must aver and prove that he was a good faith purchaser for a valuable consideration, and he is not entitled to a patent if the lands did in fact contain such mines.

Hawke v. Deffeback, 4 Dak. 20, p. 34.

The mere relinquishment of the land described by this grant can not be held to carry with it the title to the minerals found within the grant limits, but only the surface of the soil passed to and vested in the grantee, and the title to the minerals therein remained in the United States for the reason that the tract conveyed and surveyed contained well-known mineral lands.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 297.

The statement of the Land Commissioner that lands embraced in a claim and application for a patent by a purchaser from a Mexican grantee that the lands contain valuable quicksilver mines is sufficient evidence on which to refuse the application.

Secretary v. McGarrahan, 76 U. S. (9 Wall.) 298, p. 310.

17 STAT. 465, FEBRUARY 18, 1873.

COAL AND IRON LANDS—METHOD OF PURCHASE—MICHIGAN, MINNESOTA, AND WISCONSIN.

AN ACT In relation to mineral lands.

Be it enacted, etc., That within the States hereinafter named deposits or mines of iron and coal be, and they are hereby, excluded from the operations of an act entitled "An act to promote the development of the mining resources of the United States," approved May 10, 1872 (17 Stat. 91), and said act shall not apply to the mineral lands situate and being within the States of Michigan, Wisconsin, and Minnesota, and that said lands are hereby declared free and open to exploration and purchase, according to the legal subdivisions thereof, as before the passage of said act; and that any bona fide entries of such lands within said States, since the passage thereof, may be patented without reference to the provisions of said act.

A. EFFECT OF ACT.

1. MINERAL LANDS IN CERTAIN STATES EXCEPTED.
2. CODIFICATION OF ACT.
3. IRON DEPOSITS EXCEPTED.

1. MINERAL LANDS IN CERTAIN STATES EXCEPTED.

This act excepted the mineral lands in the States of Texas, Wisconsin, and Minnesota from the operation of the act of 1872 and declared them to be free and open to exploration and purchase.

Deffeback v. Hawke, 115 U. S. 392, p. 402.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

By this act deposits or mines of iron and coal in Michigan, Wisconsin, and Minnesota are expressly excluded from the operation of the mining act of 1872, and lands containing such deposits are subject to sale and purchase according to legal subdivisions the same as other lands.

Pacific Coast Marble Co. v. Northen Pac. R. Co., 25 L. D. 233, p. 240.

2. CODIFICATION OF ACT.

The provisions of this statute and of all other mining statutes, as originally enacted, are at present codified and embodied in sections 2318 to 2352 of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

3. IRON DEPOSITS EXCEPTED.

This act expressly excepts deposits or mines of iron in Michigan, Wisconsin, and Minnesota from the operation of the act of May 10, 1872 (17 Stat. 91), in effect saying that prior to that time deposits of iron ore had been subject to the operations of such act in the States named and that such deposits remained subject to its operations in States not named.

Clements, In re, Copp's Min. Dec. 214,

18 STAT. 371, MARCH 3, 1875.

MINERAL STATISTICS—RANCHO PANOCHE GRANDE LANDS—INVESTIGATION.

AN ACT Making appropriations for sundry civil expenses for the Government for the fiscal year ending June 30, 1876.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1876, namely:

* * * * * * *

For collection of mining and mineral statistics, under charge of Prof. Rossiter W. Raymond, the amount to be immediately available, to be expended, and to be for the completion of the work, $15,000. * * *

That the Secretary of the Interior be, and he is hereby, authorized and directed to cause a careful examination to be made for the purpose of ascertaining whether any person, firm, or corporation is now occupying any larger portion of the lands known as Rancho Panoche Grande, than is authorized and allowed by the laws relating to mining lands; and that he make full and detailed report of such examination to Congress at the beginning of the next session; and to enable the Secretary of the Interior to carry into effect this provision, the sum of $5,000, or so much thereof as may be necessary, is hereby appropriated.

A. MINERAL LANDS IN CALIFORNIA—PATENT.

This statute offers no obstacle to the hearing or the determination of the application of the New Idria Mining Co. for a patent for certain mineral lands in California.

New Idria Min. Co., In re, 15 Op. Atty. Genl. 388, p. 393.

19 STAT. 102, p. 121, JULY 31, 1876.

CLASSIFICATION OF PUBLIC LANDS—COAL LANDS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1877, and for other purposes.

Be it enacted, etc., * * *

For the survey of public lands and private land claims, $300,000: * * * Provided, That no lands shall be surveyed under this appropriation, except, first, those adapted to agriculture without artificial irrigation; irrigable lands, or such as can be redeemed and for which there is sufficient accessible water for the reclamation and cultivation of the same not otherwise utilized or claimed; third, timber lands bearing timber of commercial value; fourth, coal lands containing coal of commercial value; fifth, exterior boundary of town sites; sixth, private land claims.

* * * * * * *

Similar appropriations for the survey of public lands and private land claims are found in the following statutes:

19 Stat. 344, p. 348; Mar. 3, 1877.
20 Stat. 206, p. 229; June 20, 1878.

20 STAT. 377, p. 392, MARCH 3, 1879.

INSPECTING MINERAL DEPOSITS AND COAL FIELDS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Be it enacted, etc., * * *

Occasional examinations of public surveys in the several surveying districts, in order to test the accuracy of the work in the field, inspect mineral deposits, coal fields, timber districts, etc., $8,000.

* * * * * * *

Except as to amounts similar appropriations for inspecting mineral deposits and coal fields, including the mineral resources of Alaska and reports of the same, are found in the following statutes:

21 Stat. 259, pp. 273, 274, June 16, 1880.
21 Stat. 435, p. 451, Mar. 3, 1881.
22 Stat. 302, pp. 327, 329, Aug. 7, 1882.
22 Stat. 603, pp. 623, 624, Mar. 3, 1883.
23 Stat. 194, pp. 211, 212, July 7, 1884.
23 Stat. 478, p. 499, Mar. 3, 1885.
24 Stat. 222, p. 240, Aug. 4, 1886.
24 Stat. 509, p. 527, Mar. 3, 1887.
25 Stat. 505, pp. 525, 527, Oct. 2, 1888.
25 Stat. 939, pp. 959, 960, Mar. 2, 1889.
26 Stat. 371, pp. 390, 391, Aug. 30, 1890.
26 Stat. 948, pp. 971, 972, Mar. 3, 1891.
27 Stat. 349, pp. 370, 371, Aug. 5, 1892.
27 Stat. 572, pp. 592, 594, Mar. 3, 1893.
28 Stat. 372, pp. 394, 398, Aug. 18, 1894.
28 Stat. 910, pp. 937, 939, 940, Mar. 2, 1895.
29 Stat. 413, pp. 434, 435, 436, June 11, 1896.
30 Stat. 11, pp. 33, 37, June 4, 1897.
30 Stat. 597, pp. 620, 622, July 1, 1898.
30 Stat. 1074, p. 1098, Mar. 3, 1899.
31 Stat. 588, pp. 616, 617, June 6, 1900.
31 Stat. 1133, pp. 1160, 1161, Mar. 3, 1901.
32 Stat. 419, pp. 454, 455, June 28, 1902.
32 Stat. 1083, pp. 1117, 1118, Mar. 3, 1903.
33 Stat. 452, pp. 484, 486, Apr. 28, 1904.
33 Stat. 1156, pp. 1185, 1187; Mar. 3, 1905.
34 Stat. 679, pp. 725, 727, June 30, 1906.
34 Stat. 1295, pp. 1334, 1336, Mar. 4, 1907.
35 Stat. 317, pp. 348, 349, May 27, 1908.
35 Stat. 945, pp. 987, 988, Mar. 4, 1909.
36 Stat. 703, pp. 741, 743, June 25, 1910.
36 Stat. 1363, pp. 1416, 1418, 1419, Mar. 4, 1911.
37 Stat. 417, pp. 456, 457, Aug. 24, 1912.
38 Stat. 4, pp. 46, 47, June 23, 1913.

34 STAT. 66, MARCH 27, 1906.

CLASSIFYING PUBLIC LANDS—ALABAMA.

AN ACT To authorize the Secretary of the Interior to reclassify the public lands of Alabama.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to reclassify the public lands of Alabama, so as to determine which of said lands are in fact agricultural lands and

which mineral lands, and to decide which of said lands should be subject to homestead entry, and to that end he is hereby authorized and empowered to employ such expert mineralogist, assayists, and civil engineers as may be necessary to designate and survey said mineral and agricultural lands.

34 STAT. 89, MARCH 27, 1906.

LEASING LANDS—COLORADO.

AN ACT Leasing and demising certain lands in La Plata County, Colo., to the P. F. U. Rubber Company.

Be it enacted, etc., * * *

SEC. 3. That nothing herein contained shall grant or convey or be held to grant or convey to said company, its successors or assigns, during such time as it or they may hold said lands under the lease hereby authorized, any right, license, or privilege to take or remove from said premises, or any part thereof, any growing timber, stone, clay, ore, metals, or minerals of any kind or nature whatsoever, save and except such timber and stone as may be necessary for the immediate use of said company, its successors and assigns, in the building, erection, or maintenance of such fences, flumes, ditches, roads, telephone, telegraph, and power transmission lines, buildings, and machinery: Provided, however, That no patent shall issue for the said lands or any part thereof until the Secretary of the Interior shall ascertain by such examination, prospecting, and mineral tests as he may deem necessary and proper the existence of any valuable and merchantable deposits of coal or other mineral upon such premises; and any such merchantable deposits of coal or other mineral so determined, together with the right of ingress or egress, shall be excluded from said patent. The right of entry and egress for the purposes of such examinations and tests shall further be reserved in said lease.

SEC. 4. That the rights and privileges hereby granted shall not be sold, assigned, transferred, or conveyed to any person or persons, firm, or corporation whatsoever, save and except upon the express permission in writing of the Secretary of the Interior. And in case of any violation of this provision the lease and privileges hereby granted shall at once and forever cease and determine.

34 STAT. 313, JUNE 20, 1906.

SPONGES—MINING.

AN ACT To regulate the landing, delivery, cure, and sale of sponges.

Be it enacted, etc., That from and after May 1, 1907, it shall be unlawful to land, deliver, cure, or offer for sale at any port or place in the United States any sponges taken by means of diving or diving apparatus from the waters of the Gulf of Mexico or Straits of Florida: Provided, That sponges taken or gathered by such process between October 1 and May 1 of each year in a greater depth of water than 50 feet shall not be subject to the provisions of this act: And provided further, That no sponges taken from said waters shall be landed, delivered, cured, or offered for sale at any port or place in the United States of a smaller size than 4 inches in diameter.

SEC. 2. That every person guilty of a violation of this act shall for each offense be liable to a fine of not less than $100 or more than $500, which fine shall be a lien against the vessel on which the offense was committed. And every vessel used or employed in violation of this act shall be liable to a fine of not less than $100 or more than $500 or forfeiture, and shall be seized and proceeded against by process of libel in any court having jurisdiction of the offense.

SEC. 3. That any violation of this act shall be prosecuted in the district court of the United States of the district wherein the offense was committed.

SEC. 4. That it shall be the duty of the Secretary of Commerce and Labor to enforce the provisions of this act, and upon his request the Secretary of the Treasury and Secretary of the Navy may employ the vessels of the Revenue-Cutter Service and of the Navy, respectively, to that end.

NOTE.—This act is repealed by the act of August 15, 1914.

A. SPONGE MINING ACT.

1. APPLICATION OF ACT TO SPONGES IN TIDE WATERS.

This act relates only to sponges taken outside of the territory of a State.

Abbey Dodge, In re, 223 U. S. 166, p. 173.

The States own the tide waters themselves, as well as the products thereof, and Congress has no control over sponges growing on the land beneath the tide water within the jurisdiction of a State.

Abbey Dodge, In re, 223 U. S. 166, p. 173.

38 STAT. 692, AUGUST 15, 1914, PUBLIC—NO. 173—63D CONGRESS.

NEW SPONGE-MINING ACT.

AN ACT To regulate the taking or catching of sponges in the waters of the Gulf of Mexico and the Straits of Florida outside of State jurisdiction; the landing, delivering, curing, selling, or possession of the same; providing means of enforcement of the same; and for other purposes.

Be it enacted, etc., That on and after the approval of this act it shall be unlawful for any citizen of the United States, or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges.

SEC. 2. That the presence of sponges of a diameter of less than five inches on any vessel or boat of the United States engaged in sponging in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, or the possession of any sponges of less than the said diameter sold or delivered by such vessel, shall be prima facie evidence of a violation of this act.

SEC. 3. That every person, partnership, or association guilty of a violation of this act shall be liable to a fine of not more than $500, and in addition such fine shall be a lien against the vessel or boat on which the offense is committed, and said vessel or boat shall be seized and proceeded against by process of libel in any court having jurisdiction of the offense.

SEC. 4. That any violation of this act shall be prosecuted in the district court of the United States of the district wherein the offender is found or into which he is first brought.

SEC. 5. That it shall be the duty of the Secretary of Commerce to enforce the provisions of this act, and he is authorized to empower such officers and employees of the Department of Commerce as he may designate, or such officers and employees of other departments as may be detailed for the purpose, to make arrests and seize vessels and sponges, and upon his request the Secretary of the Treasury may employ the vessels of the Revenue Cutter Service or the employees of the Customs Service to that end.

SEC. 6. That the act approved June 20, 1906, entitled "An act to regulate the landing, delivery, cure, and sale of sponges" and all other laws in conflict herewith be, and the same hereby are, repealed.

34 STAT. 517, chap. 3554, JUNE 27, 1906.

SALE OF ISOLATED TRACTS—NONMINERAL.

AN ACT To amend an act entitled "An act to amend section 2455 R. S.," approved February 26, 1895.

Be it enacted, etc., That the act of February 26, 1895 (28 Stat. 687), entitled "An act to amend section 2455 R. S.," be, and the same is hereby, amended so as to read as follows:

"It shall be lawful for the Commissioner of the General Land Office to order into market and sell, at public auction at the land office of the district in which the land is situated, for not less than $1.25 per acre, any isolated or disconnected tract or parcel of the public domain not exceeding one quarter section which, in his judgment, it would be proper to expose for sale after at least 30 days' notice by the land officers of the district in which such land may be situated: Provided, That this act shall not defeat any vested right which has already attached under any pending entry or location."

A. APPLICATION FOR ISOLATED TRACTS—SHOWING AS TO ABSENCE OF MINERAL.

This act requires applicants for isolated tracts to show by their affidavits, corroborated by at least two witnesses, that the land applied for contains no salines, coal, or other mineral, and the purpose of this is that the land office may have information upon which to base its action and to enable it to determine whether or not the lands should be offered at public sale, but affidavits as to such nonmineral character need not be by the purchaser himself, but may be by any creditable persons.

McNee, In re, 40 L. D. 494.
See Moses, In re, 31 L. D. 320.

RAILROAD GRANTS.

I. MINERAL LANDS EXCLUDED.
II. RAILROAD LANDS—CLASSIFICATION, p. 1148.

I. MINERAL LANDS EXCLUDED.

12 STAT. 489, p. 492, JULY 1, 1862.

UNION PACIFIC—MINERAL LANDS NOT INCLUDED.

AN ACT To aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, etc.

* * * * * * *

SEC. 3. And be it further enacted, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof and within the limits of 10 miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or a homestead claim may not have attached, at the time the line of said road is definitely fixed: Provided, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and preemption, like other lands, at a price not exceeding $1.25 per acre, to be paid to said company.

A. RAILROAD GRANT—UNION PACIFIC.
B. CONVEYANCE BY RAILROAD COMPANY—RIGHT AND TITLE OF PURCHASER, p. 1107.

A. RAILROAD GRANT—UNION PACIFIC

1. CONSTRUCTION AND EFFECT.
2. MINERAL LANDS EXCEPTED.
3. MINING LOCATIONS WITHIN LIMITS.
4. MINERAL CHARACTER OF LAND.
   a. EXTENT AND VALUE.
   b. KNOWN MINERAL CHARACTER—MEANING.
   c. HEARING TO DETERMINE—PRACTICE.
   d. DETERMINATION—EFFECT—TIME OF MAKING.
   e. LANDS RETURNED AS MINERAL—BURDEN OF PROOF.

5. NONMINERAL LANDS PASS UNDER GRANT.
6. LIST OF LANDS SELECTED—NOTICE—BURDEN OF PROOF.
7. NOTICE—PUBLICATION AND POSTING.
8. RIGHT OF WAY OVER MINERAL LANDS.
9. PATENT.
   a. OFFICE AND EFFECT.
   b. MEANING AND EXTENT OF EXCEPTING CLAUSE.
   c. SUBSEQUENT DISCOVERY OF MINERALS—EFFECT ON TITLE.
10. LANDS VALUABLE FOR STONE.

1. CONSTRUCTION AND EFFECT.

The words employed in the grant of lands to the Central Pacific Railroad Co. are words of absolute donation, and import a grant in præsenti, and can have no other meaning, and this construction has been uniformly applied by the Land Department to similar grants.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 242.
Leavenworth, etc., R. Co. v. United States, 92 U. S. 733, p. 741.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167.

Under this grant the railroad company could bind itself to convey to a purchaser any land within a section granted to it.

Rogers v. Cooney, 7 Nev. 213, p. 216.

The presumption is that the intention of Congress was the same with reference to mineral lands reserved from the grant to the Northern Pacific Railroad Co. in other States as was expressly declared with reference to lands in Montana and Idaho, as declared in the act of February 26, 1895 (2 Sup. R. S. 385).

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 508.

Congress did not intend by the act of February 2, 1895, to interpret the reservation clause of the act granting land to the Northern Pacific Railroad Co. so as to give a restricted definition to the word "mineral," as the test did not relate to the nature or quality of the mineral, but to its value.

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 508.
See Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 429.

The right of the Government is involved in the reservation found in this act, as the minerals were reserved to the sovereign, but aside from the reservations a legal title passed to the grantee.

Adams v. Reed, 11 Utah, 480, p. 497.
See Tarpey v. Deseret Salt Co., 5 Utah, 494.

2. MINERAL LANDS EXCEPTED.

In the grant to the Central Pacific Railroad Co. the mineral lands were expressly reserved not only by the statute but by the proclamation of the President.

Whitney v. Taylor, 158 U. S. 85, p. 97.

The effect of the broad excepting provision of the act effectually excepts all mineral lands from the grant where the mineral character of the lands is discovered prior to the issuance of the patent or certificate where patent is not required.

Francoeur v. Newhouse, 40 Fed. 618.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 603.
Valentine v. Valentine, 47 Fed. 597.
Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.
Bullock v. Central Pac. R. Co., 11 L. D. 590, p. 592.
North Star Min. Co. v. Central Pac. R. Co., 12 L. D. 608.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 466.
Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 602.
Eagle Salt Works, In re, 5 C. L. O. 4.
Spong, In re, 5 L. D. 193.
Merrill v. Dixon, 15 Nev. 401, p. 404.

Mineral lands do not pass to the railroad by virtue of this grant, but the timber upon mineral land within 10 miles of the center line of the road or branches is granted to the railroad company, excepting so much as is necessary to support the improvements of mine owners.

Central Pac. R. Co. v. Mammoth Blue Gravel Co., 1 C. L. O. 134.

Lands containing valuable deposits of salt are mineral lands, excluded from the operation of this grant.

Eagle Salt Works, In re, 5 C. L. O. 4.

The exception of mineral lands from the operation of this act found in this section has no reference to the grant of the right of way provided for in section 2.

Doran v. Central Pac. R. Co., 24 Cal. 246, p. 254.

A discovery of mineral at any time prior to the issue of a patent in land in a railroad grant will defeat the grant, and a purchaser from the company takes only in the event that the land passes under the grant.

Barnstetter v. Central Pac. R. Co., 21 L. D. 464, p. 466.

This and the amendatory act (13 Stat. 356) expressly provide that no lands shall be granted to the railroad company which are mineral in character, except such as should contain coal or iron.

United States v. Central Pac. R. Co., 93 Fed. 871, p. 872.

3. MINING LOCATIONS WITHIN LIMITS.

It has been the uniform practice of the department to permit and maintain mineral locations within the geographic limits of railroad grants based upon discoveries made at any time before patent or certification, where patent is not required.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.
Adams v. Reed, 11 Utah 480, p. 495.

Mineral lands situated within the limits of a railroad grant are subject to location up to the time of the issuance of patent to the railroad company.

Barden v. Northern Pac. R. Co., 154 U. S. 288.
Van Ness v. Rooney, 160 Cal. 131, p. 136.

4. MINERAL CHARACTER OF LAND.

a. EXTENT AND VALUE.

In excluding mineral lands from the grant to the Pacific Railroad Co., Congress only intended to reserve land valuable for mining purposes.

Davis v. Weibbold, 139 U. S. 507, p. 520.
Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.
Cowell v. Lammers, 21 Fed. 200.
Merrill v. Dixon, 15 Nev. 401.

The words "mineral lands" used in this statute must be construed in a practical sense, and with reference to the present known or obviously apparent condition of the lands granted.

Francoeur v. Newhouse, 40 Fed. 618, p. 621.
Francoeur v. Newhouse, 43 Fed. 236, p. 238.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 595.
See Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.
Cowell v. Lammers, 21 Fed. 200.

Mineral land must be such that the deposit is of substantial value and such as can be secured with profit.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 464.
United States v. Iron Silver Min. Co., 128 U. S. 673.

The exception of mineral lands from a grant to a railroad company does not exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 464.
See Davis v. Weibbold, 139 U. S. 507.

The fact that parts of the land claimed under this grant contained particles of gold or veins of gold-bearing quartz rock would not necessarily impress it with the character of mineral land, but it must be shown that the land contains metal in quantities sufficient to render it available and valuable for mining purposes.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 465.
Alford v. Barnum, 45 Cal. 482.

The discovery of the mineral character of land at any time prior to the issuance of patent, or certification where patent is not required, will exclude such lands from this grant, and it is not necessary that known mines should exist at the time of the grant in order to exclude mineral lands.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 466.
See Central Pac. R. Co. v. Valentine, 11 L. D. 238.

To constitute the exemption contemplated by this act there should be upon the land in controversy ascertained coal deposits of such extent and value as to make the land more valuable to work as a coal mine under existing conditions than for merely agricultural purposes, and the surface indications of the existence of veins of coal need not constitute a known mine within the meaning of the act, but the question must be determined according to the facts in existence at the time of the sale.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 465.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

b. KNOWN MINERAL CHARACTER—MEANING.

The term "mineral lands," as used in this act, means lands known to be mineral at the time the grant took effect, or which there were satisfactory reasons to believe were such at such time.

Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.
Cowell v. Lammers, 21 Fed. 200, p. 206.
Francoeur v. Newhouse, 43 Fed. 236, p. 238.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 602.
Francoeur v. Newhouse, 40 Fed. 618, p. 621.
Valentine v. Valentine, 47 Fed. 597, p. 598.
Northern Pac. R. Co. v. Walker, 47 Fed. 681, p. 684.
Smith v. Hill, 89 Cal. 122, p. 126.
See Deffeback v. Hawke, 115 U. S. 392, p. 404.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 326.

By the exception of mineral lands from the grant to the Central Pacific Railroad Co., Congress meant not only lands mineral in fact, but lands known to be mineral, or such as are apparently mineral and generally recognized as such.

Francoeur v. Newhouse, 40 Fed. 618, p. 621.
Francoeur v. Newhouse, 43 Fed. 236, p. 240.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 595.
See Pacific Coast Min., etc., Co. v. Spargo, 16 Fed. 348.
Cowell v. Lammers, 21 Fed. 200.

Under these grants lands only were reserved as mineral lands which were known to be such at the time the grant attached and when the line of the road became definitely fixed.

Francoeur v. Newhouse, 43 Fed. 236.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 604.

c. HEARING TO DETERMINE.—PRACTICE.

Where lands claimed by the company as nonmineral were returned by the surveyor general as mineral and the evidence is insufficient to show its nonmineral character, the land office may order a hearing to be had before the local land officers, after due notice, to ascertain the true character of the lands.

Central Pac. R. Co., In re, 13 L. D. 603, p. 606.

At a hearing the claimant and witnesses must be thoroughly examined with regard to the character of the land, whether it has been thoroughly prospected, or whether or not there exists any lode or vein of quartz or other rock in place bearing mineral which has been claimed, located, or worked, and whether such work has been abandoned, to what extent mining is carried on, and the submission of the usual nonmineral affidavit is not sufficient to enable the department to determine as to the real character of the land.

Central Pac. R. Co., In re, 5 C. L. O. 2.

A contestant who alleges the mineral character of land that is prima facie agricultural must show affirmatively the existence of mineral in quantities sufficient to make the land more valuable for mining than for agricultural purposes.

Berry v. Central Pac. R. Co., 15 L. D. 463, p. 464.
See Tinkham v. McCaffrey, 13 L. D. 517.

Proceedings had in a case arising upon a protest by one party should not bar a further investigation upon an application by another person.

Zadig v. Central Pac. R. Co., 20 L. D. 26, p. 27.

The fact that lands conveyed to the Central Pacific Railroad Co. had been surveyed at a time when mineral lands were not authorized to be surveyed and the plats filed without designating the lands as mineral is prima facie evidence that they were not mineral in character and included in the congressional grant and patentable as such.

Cowell v. Lammers, 21 Fed. 200, p. 205.

d. DETERMINATION—EFFECT—TIME OF MAKING.

There must be some point of time in law when the character of public land as to its being mineral or otherwise must be finally determined and the best point for such determination is at the time of issuing the patent.

Cowell v. Lammers, 21 Fed. 200, p. 206.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 606.

The Land Department has jurisdiction until patent or certification to the railroad company to determine whether any of the lands within the lateral limits of the grant had been at the time the line of the road was definitely fixed, sold, reserved, or otherwise disposed of, or were for any reason excepted from the grant, and hence has jurisdiction to determine whether the lands are mineral and for that reason excepted from the grant.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.
Searle Placer, In re, 11 L. D. 441, p. 442.
Bullock v. Central Pac. R. Co., 11 L. D. 590.

If the lands are discovered to be mineral, or if prior to patent or certification, where patent is not required, this fact is brought to the attention of the Land Department the discovery proves the lands to have been mineral at the date mentioned, and this discovery serves to bring the lands within the excepting clause of the grant, and as no date is fixed in the grant in which the mineral character of the lands must be known in order to bring them within the exception, hence, if they are in fact mineral they are within the exception whether their mineral character is known at the time of definite location or approval of survey or not.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.
See Burke v. Southern Pac. R. Co. 234 U. S. 669.

The Land Department retains jurisdiction to determine the character of the land, whether claimed under this grant or the mining laws, until patent issues.

North Star Min. Co. v. Central Pac. R. Co., 12 L. D. 608.
See Searle Placer, In re, 11 L. D. 441.

A finding by the department upon an ex parte proceeding that certain land is agricultural in character does not prevent the department from ordering a hearing upon the application of a mineral claimant for land returned as mineral.

North Star Min. Co. v. Central Pac. R. Co., 12 L. D. 608, p. 609.

The effect of a decision in a previous proceeding as to the nonmineral character of lands within a railroad grant returned as mineral is very different from an adjudication arising from the assertion of claim under the settlement laws as against the return of the surveyor general, and in the latter case the adjudication being that the land is nonmineral will estop subsequent inquiry as to the character of the land as against such a claim in the absence of a charge of fraud in the first proceedings.

Barnstetter v. Central Pac. R. Co., 21 L. D. 464, p. 466.

A judgment that a specific tract included in a railroad grant is in fact agricultural will not preclude a subsequent inquiry on the protest of a mineral claimant prior to the issue of a patent.

Barnstetter v. Central Pac. R. Co., 21 L. D. 464, p. 466.
Oregon & California R. Co. v. Puckett, 39 L. D. 169, p. 171.

Under this grant any time before exploration for minerals and the issuance of patents the Government can, upon the discovery of minerals, not only refuse patent for lands containing minerals but disposes of them to other than the grantee, as such grant expressly excepted all mineral land whether there was knowledge of the existence of mineral deposits or not, and if minerals were discovered at any time before patent no title passes.

Adams v. Reed, 11 Utah 480, pp. 491, 494.
See St. Paul & Pac. R. Co. v. Northern Pac. R. Co., 139 U. S. 1.
Deseret Salt Co. v. Tarpey, 142 U. S. 241.
Ankeny v. Clark, 148 U. S. 345.
Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 332.

e. LANDS RETURNED AS MINERAL—BURDEN OF PROOF.

Where lands have been returned by the surveyor general as mineral, the burden of proof is upon the company to show that such tracts claimed by it are nonmineral.

Central Pac. R. Co., In re, 13 L. D. 603, p. 606.

5. NONMINERAL LANDS PASS UNDER GRANT.

A patent regularly issued by the United States to the railroad company, without fraud or mistake on the part of the land officers or the company, was a determination by the proper tribunal that the lands covered by the patent were not mineral at the

date of the issuance of the patent under the proviso of this act, as the statutory exception of mineral lands apply only to lands known to contain valuable minerals prior to the issuance of the patent.

Spong, In re, 5 L. D. 193, p. 194.
See Deffeback v. Hawke, 115 U. S. 392, p. 401.
United States v. San Pedro, etc., Co., 4 N. Mex. 225, p. 294.

An odd-numbered section within the primary limits of this railroad grant, returned by the surveyor general, as of a class subject to the operation of the grant, passes to the railroad company under the grant.

McCloud v. Central Pac. R. R. Co., 29 L. D. 27, p. 29.

Where local officers have found that lands included within this grant are nonmineral lands they pass to the company by virtue of the grant.

Central Pac. R. Co., In re, 8 L. D. 30.

The land in controversy was excepted from the operation of this grant by reason of a preemption filing and settlement made thereon by a qualified settler at the date the right of the company attached to its grant.

Austin v. Luey, 21 L. D. 507.
See Central Pac. R. Co. v. Luey, 120 Lands & Railroads Records, 223.

6. LIST OF LANDS SELECTED—NOTICE—BURDEN OF PROOF.

When the railroad company presents a list of lands for selection with the proper nonmineral affidavit, 30 days are given by publication, in which any person may show that any tract included in the selection is mineral; but the burden is on the party so alleging, and a hearing may be ordered at the expense of the mineral affiant to determine the mineral character of any such tract.

Central Pac. R. Co., In re, 8 C. L. O. 6.

Where irregularity of the proceedings attending the filing of the list of lands is shown, and the fact that contests have been initiated affecting the character of a large number of the tracts listed, and where recent investigations indicate the character of many other tracts as mineral, the entire list should be rejected, reserving to the railroad company to select such of the lands in the list as may not be shown to be mineral in character.

Central Pac. R. Co., In re, 13 C. L. O. 269.
See Buttz v. Northern Pac. R. Co., 119 U. S. 55.

The failure of the railroad company to list lands determined by local officers to be nonmineral will not defeat the effect of proceedings instituted to determine that question.

Central Pac. R. Co., In re, 8 L. D. 30.
Central Pac. R. Co., In re, 13 L. D. 603.

7. NOTICE—PUBLICATION AND POSTING.

The publication and posting of notice of a hearing on an application by a mineral claimant of a part of an odd-numbered section, within the limits of this grant, is not sufficient notice to the company.

McCloud v. Central Pac. R. Co., 29 L. D. 27, p. 29.

8. RIGHT OF WAY OVER MINERAL LANDS.

The right of way granted to the railroad company by this act includes a right of way over mineral lands as well as over other public lands.

Doran v. Central Pac. R. Co., 24 Cal. 246, p. 253.

9. PATENT.

a. OFFICE AND EFFECT.

The fact that the office of a patent is to define and identify the land granted and to evidence the title which vests by the act necessarily implies the existence of jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant and capable of passing thereunder, and under this jurisdiction the department refuses to issue patents to railroad companies for lands found to be mineral in character at any time before the date of the patent.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 246.

The issuance of a patent under this act is a determination by the proper tribunal that the lands covered by the patent were granted to the railroad company and were not, in fact, mineral lands at the date of the patent.

Sponge, In re, 13 C. L. O. 207.

A clause of exception and exclusion as to mineral lands in a patent in no way affects the rights of the parties given by this statute, and the same force and effect must be given to the patent upon collateral attack as it would have received had such exception been omitted.

Cowell v. Lammers, 21 Fed. 200, p. 208.

b. MEANING AND EXTENT OF EXCEPTING CLAUSE.

The excepting clause in the patent to the Central Pacific Railroad Co., excluding all mineral lands, other than coal and iron lands, from such transfer, means lands known to contain valuable minerals prior to the issuing of such patent and subsequent discoveries can not affect the title of the company to the land.

Cowell v. Lammers, 21 Fed. 200, p. 202.

There is no authority for issuing a patent which in effect says that if the lands herein described turn out to be agricultural lands then they are granted, but if they turn out to be mineral lands then they are not granted.

Cowell v. Lammers, 21 Fed. 200, p. 208.

c. SUBSEQUENT DISCOVERY OF MINERALS—EFFECT ON TITLE.

In the grant of lands to the Central Pacific Railroad Co., Congress did not intend to exclude lands on which mineral should be subsequently discovered, but which did not fall within the statutory contemplation of mineral lands at the time of the grant.

Francoeur v. Newhouse, 40 Fed. 618, p. 621.
Francoeur v. Newhouse, 43 Fed. 236, p. 238.

The discovery of a gold mine after lands were granted to the Central Pacific Railroad Co., and title had vested, did not defeat the title, where such lands were not known to be mineral at the time of the grant.

Francoeur v. Newhouse, 40 Fed. 618.
Valentine v. Valentine, 47 Fed. 597.
Northern Pac. R. Co. v. Walker, 47 Fed. 681, p. 683.

The discovery of gold-bearing quartz in lands many years after their grant to a railroad company will not defeat the grant, where there was nothing appearing at the time to take the lands out of the operation of the grant.

Francoeur v. Newhouse, 40 Fed. 618, p. 622.
Francoeur v. Newhouse, 43 Fed. 236, p. 238.

The discovery of the mineral character of land within the lateral limits of this grant after the date when the railroad company acquired possession, established the fact that such lands were always mineral lands and brings them clearly within the

excepting clause of the grant, and they are no less mineral lands because not known to be such at the date of this grant or at the date the railroad company acquired possession.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.
Bullock v. Central Pac. R. Co., 11 L. D. 590.

10. LANDS VALUABLE FOR STONE.

Where Congress has chosen the word "mineral" as including lands chiefly valuable for stone, to define a class of lands reserved from the grant to such railroad company, the courts have no authority to narrow or limit the definition in order to enhance the value of the grant, and to diminish the rights of the general public, and the fact of an exception of coal and iron does not justify such a construction.

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 507.
See Northern Pac. R. Co. v. Soderberg, 104 Fed. 425.

B. CONVEYANCE BY RAILROAD COMPANY—RIGHT AND TITLE OF PURCHASER.

The Central Pacific Railroad Co. can not make a valid grant of a tract of land on which mining has been carried on, and which was believed to be mineral land, and when the land agent of the railroad company informed the purchaser that its status as mineral land would be sustained.

Valentine v. Valentine, 47 Fed. 597, p. 599.

The good faith of a purchaser of lands from a railroad company as patentee under a railroad grant, as well as the validity of the original patent, is to be determined by the known character of the land at the date of the original patent.

United States v. Central Pac. R. Co., 93 Fed. 871, p. 873.

Mineral lands excepted from the operation of this grant to the railroad company were excluded and excepted by all patents issued conveying lands described to the railroad company, and the purchaser of any such land from the railroad company has the right to cut wood or timber thereon.

Merrill v. Dixon, 15 Nev. 401, p. 405.

13 STAT. 356, p. 358, JULY 2, 1864.

AMENDMENT TO 12 STAT. 489—UNION PACIFIC.

AN ACT To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, etc.," (12 Stat. 489).

Be it enacted, etc., * * *

SEC. 4. And be it further enacted, That section 3 of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten," and by striking out the word "ten," where the same occurs in said section, and by inserting in lieu thereof the word "twenty." And section 7 of said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any preemption, homestead, swamp land, or other lawful claim, nor include any Government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and

the timber necessary to support his said improvements as a miner, or agriculturist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the preemption laws: Provided, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed 160 acres for each settler who claims as an agriculturist, and such quantity for each settler who claims as a miner, as the said commissioner may establish by general regulation: Provided, also, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section 3, shall not apply to the timber growing or being on any land farther than 10 miles from the center line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "An act donating lands to the several States and Territories which may provide colleges for the benefits of agriculture and the mechanic arts," approved July 2, 1862. * * *

A. CONSTRUCTION OF AMENDED ACT.
B. RAILROAD GRANT—UNION PACIFIC.
C. COAL AND IRON NOT INCLUDED IN MINERAL LANDS, p. 1110.

A. CONSTRUCTION OF AMENDED ACT.

See 12 Stat. 489, p. 1099.

Section 4 is construed in the light of the general principle that Congress, in the act of making these grants of public lands, is not supposed to exercise its liberality at the expense of preexisting rights, which, though imperfect, were still meritorious and have just claims to legislative protection.

Broder v. Water Co., 101 U. S. 274, p. 276.

The reservation clause of this act is much more liberal in extending protection of preexisting rights than in the reservation clause in previous grants. Both the prior reservations made by the Government and rights of preemption are excepted, as well as the improvements of bona fide settlers on land returned or denominated mineral land, and the timber necessary to support the miner's improvements and any other lawful claim, evidenced by improvements or other acts of possession.

Broder v. Water Co., 101 U. S. 274, p. 277.

B. RAILROAD GRANT—UNION PACIFIC.

1. POLICY OF GOVERNMENT TO EXCLUDE MINERALS.
2. MINERALS AND MINERAL LANDS EXCEPTED.
3. MINING CLAIMS—EXCEPTION AND MEANING.
4. MINERALS AND IMPROVEMENTS EXCEPTED.
5. COAL AND IRON LANDS NOT EXCEPTED.

1. POLICY OF GOVERNMENT TO EXCLUDE MINERALS.

The policy of Congress, as expressed in the grants to aid in the construction of railroads (14 Stat. 83; 14 Stat. 94; 14 Stat. 239; 14 Stat. 292; 14 Stat. 548; 16 Stat. 573), has always been to exclude the mineral lands and reserve them for special disposition.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 317.
Whitney v. Taylor, 158 U. S. 85, p. 97.

The reservation of mineral lands in the several railroad grants was intended to keep them under the control of the Government for the public good in the development of the mineral resources of the country.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 319.

2. MINERALS AND MINERAL LANDS EXCEPTED.

By this section the grant to the Pacific Railroad Companies did not include mineral lands.

Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 174.
Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 242.
Bullock v. Central Pac. R. Co., 11 L. D. 590.

All mineral lands are expressly excepted from the operation of this grant, and the amendatory act expressly provides that the grant shall not include any mineral lands.

Chicago Quartz Min. Co. v. Oliver, 75 Cal. 194, p. 196.

In all these grants (12 Stat. 489; 13 Stat. 356; 14 Stat. 83; 14 Stat. 94; 14 Stat. 239; 14 Stat. 292; 14 Stat. 548; 16 Stat. 573) minerals, except iron and coal, have uniformly been reserved, and in no instance has such a grant been held to pass minerals.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 317.
Traphagen v. Kirk, 30 Mont. 562, p. 572.

3. MINING CLAIMS—EXCEPTION AND MEANING.

This act, by its grant to the Northern Pacific Railroad Company, expressly excepts all lands to which the United States did not have title free from preemption or other claims or rights, and all mining claims properly located at the time of the location of the lode were excluded from the grant.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 630.

All applications of record for the purchase of lands as mineral lands are "claims" within the meaning of this statute, and were excepted from its operation, and did not come under the grant to the railroad company, though the applications were finally rejected, because the lands were ascertained not to be mineral lands.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 630.

The privilege of exploring for mineral lands was in full force at the time of the location of the Northern Pacific Railroad, and the right was reserved and excepted out of the grant to the company.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 320.
Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 635.
United States v. Oregon, etc., R. Co., 176 U. S. 28, p. 45.

4. MINERALS AND IMPROVEMENTS EXCEPTED.

The prior reservations made by the governor and rights of preemption are excepted, as well as the improvements of bona fide settlers on lands returned as mineral, together with the timber necessary to support the miners' improvements, and any other lawful claim.

Broder v. Water Co., 101 U. S. 274, p. 277.

In the original statute the word "or" is erroneously substituted for the word "on," and it is only the improvements of a bona fide settler on lands returned and denominated as mineral lands that are referred to in the act.

McLaughlin v. Menotti, 105 Cal. 572.

This statute is considered to mean that the lands granted shall not include any mineral lands, or the improvements of any bona fide settler on any lands returned as mineral.

Merrill v. Dixon, 15 Nev. 401, p. 407.

5. COAL AND IRON LANDS NOT EXCEPTED.

This section provides that the amendment shall not be construed so as to include coal and iron land, thus plainly including such land in the grant to the railroad company whenever found upon the odd sections granted.

Union Pac. R. Co. v. Crismon, Copp's Min. Lands, 340.

Rocky Mountain Coal & Iron Co., In re, 1 C. L. O. 1.

Under this act mineral lands are excluded from the grant to the Union Pacific Railroad Co., but provides that the term "mineral land" shall not include coal and iron lands.

Union Pac. R. Co. v. Crismon, In re, 2 C. L. O. 67.

Under this act coal lands to which rights had attached under the act of March 3, 1865 (13 Stat. 529), before the line of the railroad was definitely fixed at such lands, were excluded from the grant to the railroad company.

Union Pac. R. Co. v. Crismon, Copp's Min. Lands, 340, p. 341.

C. COAL AND IRON NOT INCLUDED IN MINERAL LANDS.

This act amending the act of 1862 (12 Stat. 492), declares that the term "mineral lands" shall not be construed to include coal and iron lands.

Davis v. Weibbold, 139 U. S. 507, p. 517.

By the express provisions of these statutes the term "mineral lands" does not include coal and iron lands.

Davis v. Weibbold, 139 U. S. 507, p. 519.
Alford v. Barnum, 45 Cal. 482.
Spong, In re, 5 L. D. 193.

These statutes making grants to the Union Pacific Railroad Co. expressly declare that all mineral lands other than coal and iron were excepted from the grant.

Deffeback v. Hawke, 115 U. S. 392, p. 401.

14 STAT. 79, JULY 3, 1866.

AMENDMENT TO 12 STAT. 489—UNION PACIFIC.

AN ACT To amend an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean,' etc., approved July 1, 1862" (12 Stat. 489), approved July 2, 1864 (13 Stat. 356).

Be it enacted, etc., That the Union Pacific Railway Company, eastern division, is hereby authorized to designate the general route of their said road and to file a map thereof, as now required by law, at any time before December 1, 1866; and upon the filing of said map, showing the general route of said road, the lands along the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior. * * *

NOTE.—This act makes no reservation of or reference to minerals or mineral lands.

A. RAILROAD GRANT—KANSAS.

1. MINERAL LANDS RESERVED.

The act of July 1, 1862 (12 Stat. 489), and the amendatory act of July 2, 1864 (13 Stat. 356), granting lands to Kansas to aid in the construction of railroads, expressly reserved all mineral lands from the grant.

Kansas Pac. R. Co. v. Atchison, etc., R. Co., 112 U. S. 414, p. 417.
Tucker v. Masser, 113 U. S. 203, p. 204.
Kansas Pac. R. Co. v. Dunmeyer, 113 U. S. 629, p. 646.
See Deseret Salt Co. v. Tarpey, 142 U. S. 241, p. 246.

13 STAT. 66, p. 67, MAY 5, 1864.

MINERAL LANDS RESERVED.

AN ACT Granting lands to aid in the construction of railroads in Wisconsin.

Be it enacted, etc., That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from a point on the Saint Croix River or Lake, * * * to the west end of Lake Superior, * * * every alternate section of public lands designated by odd numbers, for 10 sections in width on each side of said road, deducting any and all lands that may have been granted to the State of Wisconsin for the same purpose, by the act of Congress of June 3, 1856 (11 Stat. 20), upon the same terms and conditions. * * *

SEC. 6. And be it further enacted, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, and all mineral lands be and the same are hereby reserved and excluded from the operation of this act, except so far as it may be found necessary to locate the route of such railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

A. RAILROAD GRANT—WISCONSIN.

1. MINERAL LANDS EXCLUDED.
2. LANDS KNOWN TO CONTAIN MINERAL—RELIEF.
3. ISSUANCE OF PATENT—EFFECT.
4. JURISDICTION OF LAND DEPARTMENT—TERMINATION.

1. MINERAL LANDS EXCLUDED.

All mineral lands were reserved and excluded from the operation of this act except so much thereof as were embraced in the right of way through such reserved mineral lands.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410.

The reservation and exclusion of mineral lands under this act had reference to lands known to be mineral at the date of the grant, and a discovery of mineral after the grant attached and patent issued can not defeat the title.

Courtright v. Wisconsin Central R. Co. 19 L. D. 410, p. 411.

2. LANDS KNOWN TO CONTAIN MINERAL—RELIEF.

If lands in controversy within this grant contain minerals in paying quantities and the fact was known to the officers of the company at the date of the selection or at the time of the patent and they concealed this fact from the department, such conduct was a fraud upon the Government and the courts can grant relief.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410, p. 413.

3. ISSUANCE OF PATENT—EFFECT.

A patent issued in proper form upon judgment rendered after due examination by the officers charged with its preparation and issue would, unless set aside and annulled by direct proceedings, prevent the Government from showing that the lands were mineral.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410, p. 413.
Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 330.

Under such a grant if patent has issued without fraud, though unadvisedly by officers of the Government, the consequences must be borne by the Government and the issuing of patent to the company is a determination by the department that the lands embraced therein are not mineral in character.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410, p. 413.
See Barden v. Northern Pac. R. Co., 154 U. S. 288.

4. JURISDICTION OF LAND DEPARTMENT—TERMINATION.

Under grants of this character the department has jurisdiction, and it is its duty to inquire into the character of lands up to the date of patent.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410, p. 412.
See Barden v. Northern Pac. R. Co., 154 U. S. 288.

When a patent has issued for a mining claim or any portion of the public domain the jurisdiction of the Land Department ceases as to the land so patented.

Courtright v. Wisconsin Central R. Co., 19 L. D. 410, p. 411.

13 STAT. 365, JULY 2, 1864.

NORTHERN PACIFIC—MINERAL LANDS EXCLUDED.

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, etc.

Be it enacted, etc., That (numerous persons named) are hereby created and elected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Northern Pacific Railroad Company," * * * And said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route * * * to some point on Puget Sound, with a branch, via the valley of the Columbia River, to a point at or near Portland, in the State of Oregon. * * *

SEC. 3. And be it further enacted, That there be, and hereby is, granted to the "Northern Pacific Railroad Company," its successors

and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and 10 alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than 10 miles beyond the limits of said alternate sections: Provided, That if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided, further, That the railroad company receiving the previous grant of land may assign their interest to said "Northern Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided, further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road (and within 50 miles thereof), may be selected as above provided: And provided, further, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: And provided, further, That no money shall be drawn from the Treasury of the United States to aid in the construction of said "Northern Pacific Railroad."

NOTE.—The words "and within 50 miles thereof," inclosed in parentheses in the third proviso in this section do not appear in the statutes at large, but are found in the act as passed and approved, and as recorded in the State Department.

See Northern Pacific Land Grant, In re, 41 L. D. 571; 29 Op. Atty. Gen. 498.

A. RAILROAD GRANT—NORTHERN PACIFIC.
B. MINERAL CHARACTER OF LAND, p. 1118.
C. SETTLEMENT ON COAL LAND — EFFECT AND PROTECTION, p. 1122.
D. INDEMNITY LANDS—SELECTION AND LOCATION, p. 1123.
E. CONVEYANCE BY RAILROAD COMPANY—RIGHT OF PURCHASER, p. 1124.
F. PATENT, p. 1124.

A. RAILROAD GRANT—NORTHERN PACIFIC.

1. POLICY OF GOVERNMENT AS TO MINERAL LANDS.
2. NONMINERAL LANDS ONLY INCLUDED
3. MINERAL LANDS EXCEPTED.
4. "MINERAL"—MEANING AND APPLICATION—COAL AND IRON.
5. STONE AND FIRE CLAY AS MINERALS.
6. MINING CLAIMS EXCEPTED FROM RAILROAD GRANT.
7. NONMINERAL LANDS NOT EXCEPTED AS MINING CLAIMS.

1. POLICY OF GOVERNMENT AS TO MINERAL LANDS.

See 13 Stat. 529, p. 1273.

The policy of the Government is to bestow the mineral and agricultural lands on those who will develop them.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 133.

Considering the settled policy of the Government in regard to its mineral lands, the rules of construction of legislative grants, and the limited knowledge which prevailed in regard to the mineral resources along the line of the Northern Pacific road at the date of the grant to it, such grant can not be extended to exclude lands not then known to be mineral lands.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 614.

2. NONMINERAL LANDS ONLY INCLUDED.

The grant to the railroad company applies in terms only to lands that are not mineral and not to lands or lots considered to be mineral.

Barden v. Northern Pac. R. Co., 19 L. D. 188, p. 189.
See Barden v. Northern Pac. R. Co., 154 U. S. 288.

By this grant the Northern Pacific Railroad Co. was given alternate sections of land not mineral.

Traphagen v. Kirk, 30 Mont. 562, p. 571.

Nonmineral land passes to the railroad company under this grant and such land can not be appropriated or entered as a mill site.

Mongrain v. Northern Pac. R. Co., 18 L. D. 105, p. 106.

The reservations in the grant to the Northern Pacific Railroad Co. were made in contemplation of existing laws and future legislation.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.

3. MINERAL LANDS EXCEPTED.

Congress by these acts cut off every possible suggestion that the grant under the statutes did not reserve the mineral lands.

Barden v. Northern Pac. R. Co. 154 U. S. 288, p. 312.

See 13 Stat. 567, p. 1273.

This section (3) expressly provides that all mineral lands shall be excluded from the operation of the act.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 603.
Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 132.
United States v. Northern Pac. R. Co., 103 Fed. 389.
O'Connor v. Northern Pac. R. Co., 15 L. D. 247, p. 249.
Casey v. Northern Pac. R. Co., 15 L. D. 439, p. 440.

All mineral lands other than coal and iron are excluded from the grant to the Northern Pacific Railroad Co., whether known or unknown at the time the rights of the railroad company thereto attached, whether by definite location or selection.

Northern Pac. R. Co., In re, 32 L. D. 342.

Under this section (3) the railroad company could take no mineral land, or any lands returned and denominated as mineral lands, as a part of its grant.

McLaughlin v. Menotti, 89 Cal. 354, p. 363.
McLaughlin v. Menotti, 105 Cal. 572, p. 573.

4. "MINERAL"—MEANING AND APPLICATION—COAL AND IRON.

The term "mineral lands" was used by Congress in the sense in which the term was used by practical men engaged in the mining industry at the date of the enactment.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 610.

Contemporaneous construction of the word "mineral" by the officers of the Government whose duty it is to construe the land laws is of persuasive force in case of ambiguity or doubt.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 430.
See Barden v. Northern Pac. R. Co. 154 U. S. 288.

The word "mineral" used in the various statutes is not limited to the precious metals, but may include iron, stone, and coal.

Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, p. 529.
Morgan v. United States, 169 Fed 242, p. 248.
See Mullan v. United States, 118 U. S. 271.

There is nothing in the act granting lands to the Northern Pacific Railroad Co., or in any contemporary legislation, that manifests an intention on the part of Congress to restrict or limit the meaning of the term "mineral lands," as used in this act, to metallifereous minerals only.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 246.

In these grants, Congress deemed it necessary, in order to take coal lands out of the general exception of mineral lands from the grant, to specifically provide that in these acts the words "mineral lands" shall not be held to include coal lands.

Northern Pac. R. Co., v. Collins, 14 L. D. 484, p. 488.
Crowder, In re, 30 L. D. 92, p. 95.

The provision in this act to the effect that the word "mineral" shall not include iron and coal does not change the effect of the act of March 2, 1899 (30 Stat. 994), as the latter is complete in itself, and under it no lands can be selected which are valuable for their deposits of coal.

Brown v. Northern Pac. R. Co., 31 L. D. 29, p. 31.

All mineral lands are expressly excluded from the operation of this grant, but the word "mineral," as used in this act, shall not be held to include iron or coal, and ample provision for indemnity is made in the grant for all losses on account of mineral land.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

5. STONE AND FIRE CLAY AS MINERALS.

Lands valuable for building stone or for granite quarries are mineral lands within the meaning of this statute and are reserved from the grant to the Northern Pacific Railroad Co.

Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, p. 533.
Northern Pac. R. Co. v. Soderberg, 99 Fed. 506.
Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 427.

Lands of vastly more value on account of sandstone than for agricultural purposes did not pass under the grant to the railroad, but should be classified as mineral.

Morrill v. Northern Pac. R. Co., 30 L. D. 475. p. 480.
See Beaudette v. Northern Pac. R. Co., 29 L. D. 248.

Lands valuable solely or chiefly for granite quarries are mineral lands within the exceptions of this act in the grant of lands to the Northern Pacific Railroad Co.

Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, p. 529.

If the reservation of mineral lands in this act was not sufficient to include lands valuable chiefly for granite quarries, Congress retained the power to subsequently enlarge the reservation before any rights were vested, as the grant was that of lands not otherwise reserved or appropriated at the time of the definite location of the road.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 429.
See Menotti v. Dillon, 167 U. S. 703.
Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.

Lands valuable for deposits of fire clay come within the exception of mineral lands in this grant.

Alldritt v. Northern Pac. R. Co., 25 L. D. 349, p. 350.

6. MINING CLAIMS EXCEPTED FROM RAILROAD GRANT.

The grant to the Northern Pacific Railroad Co. under this section did not include lands which had been entered as mining claims and for which applications for patents were pending when the plat of the road was filed, though such claims were subsequently held invalid, and the lands declared to be agricultural instead of mineral.

Northern Pac. R. Co. v. Sanders, 46 Fed. 239, p. 249.

A prospector could enter upon the lands granted to the Northern Pacific Railroad Co. before actual location of the road and select and locate in good faith a mining claim, though it subsequently appeared that the land was not in fact mineral.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 136.
Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 254.

Congress could initiate mineral rights in lands granted the Northern Pacific Railroad Co. after the grant and before the actual location of the road.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.

Claims to mineral lands could be initiated by discovery, possession, and development according to the customs and laws of miners at and previous to the grant to the Northern Pacific Railroad Co.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.

A mineral application duly recorded is an appropriation of the land covered thereby, and constitutes a "claim" within the meaning of the grant to the Northern Pacific Railroad Co., excepting from the operation of such grant "preemption or other claims or rights" at the time the line of said road is definitely fixed, and such land does not

pass to the railroad company even if, subsequently to the definite location of the road the applications were finally rejected because of the fact that the land was not mineral land.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, pp. 633, 637.
Montana Central R. Co., In re, 25 L. D. 250.
Sanders v. Northern Pac. R. Co., 25 L. D. 272.
Northern Pac. R. Co. v. Allen, 27 L. D. 286, p. 288.

Mineral applications made after the filing of the map of general route by the railroad company and before the definite location of its road, and which have not been canceled, serve to except the tracts embraced in such applications from the operation of this grant.

Sanders v. Northern Pac. R. Co., 25 L. D. 272.
See Sanders v. Northern Pac. R. Co., 15 L. D. 187.

Lands containing valuable mineral deposits are excepted from this grant and their location under the mining laws confers upon the locators property rights of the highest character, but they obtain no such right to nonmineral lands.

Northern Pac. R. Co. v. Allen, 27 L. D. 286, p. 288.

The "other lawful claim" referred to in section is a claim which has become in some way so connected with the paramount source of title as to be recognized as a claim by the laws of the United States.

McLaughlin v. Menotti, 89 Cal. 354, p. 363.

At the time of the passage of this act there was no act of Congress under which a right or claim could be initiated to mineral land, but the regulations and customs of miners as enforced and molded by the courts and sanctioned by legislatures constituted the law governing property in mines and in water on the public mineral lands.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.
See Jennison v. Kirk, 98 U. S. 453, p. 458.

The general descriptive words of this act are not qualified by the words of specific import and are not nullified by including in the exceptions and reservations of the grant the lands subject to the claims of miners and prospectors under the mineral-land laws.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 132.

United States statutes authorize the conveyance by the Government of mineral lands located, held, and worked according to local customs, laws, and regulations of miners.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.

7. NONMINERAL LANDS NOT EXCEPTED AS MINING CLAIMS.

Nonmineral lands are not excepted from the provisions of this grant because of a claim made under the mining laws, unless such claim was asserted before the local land office and is pending of record at the time the line of the road is definitely fixed.

Northern Pac. R. Co. v. Allen, 27 L. D. 286, p. 288.

When the railroad company has the legal title, though out of possession, it may maintain ejectment against persons holding under an invalid patent obtained to land as a mining claim, though in fact such land was known to be valuable only for agricultural purposes.

Northern Pac. R. Co. v. Cannon, 46 Fed. 224.
See Northern Pac. R. Co. v. Cannon, 46 Fed. 237.
Northern Pac. R. Co. v. Cannon, 54 Fed. 252.

Where the proof shows the existence of a valid mining location on lands within the grant to a railroad company the burden of proof is then upon the company to show that the land is nonmineral in character.

Sweeney v. Northern Pac. R. Co., 20 L. D. 394, p. 395.

B. MINERAL CHARACTER OF LAND.

1. DETERMINATION—HEARING.
2. QUESTION OF FACT—PROOF.
3. JURISDICTION OF LAND DEPARTMENT.
4. DETERMINATION OF DEPARTMENT CONCLUSIVE.
5. EFFECT OF RETURN OF SURVEYOR—PRESUMPTION.
6. TIME OF DETERMINATION.
   a. LOCATION OF ROAD.
   b. OPEN UNTIL PATENT ISSUES.
7. EXTENT AND VALUE OF MINERALS.

1. DETERMINATION—HEARING.

The railroad company may, as any other claimant for lands classified as coal lands, dispute such classification, and in such case is entitled to a hearing that any lands so disputed are more valuable for agricultural purposes than for the coal they contain, but so long as the classification stands the lands are subject to disposal only under the coal-land laws.

Northern Pac. R. Co., In re, 39 L. D. 314, p. 315.

When a controversy arises as to whether lands granted are known mineral lands it may be safely submitted to a jury for determination.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 599.

A claim that lands in a certain railroad grant are in fact mineral in character will not defeat the rights of a mineral claimant who sets up a specific claim to be subsequently heard on a similar allegation as to the character of the land in the event that the first proceedings fail.

Barnstetter v. Central Pac. R. Co., 21 L. D. 464, p. 466.
See Zadig v. Central Pac. R. Co., 20 L. D. 26.
Oregon, etc., R. Co. v. Puckett, 39 L. D. 169, p. 171.

A railroad company should be required to show affirmatively that land within its grant and which it claimed is nonmineral before a hearing is ordered to determine its mineral or nonmineral character.

O'Connor v. Northern Pac. R. Co., 15 L. D. 247, p. 249.

2. QUESTION OF FACT—PROOF.

Whether certain lands are valuable for minerals is a question of fact which must be determined from evidence.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 133.
Northern Pac. R. Co. v. Wright, 51 Fed. 68, p. 72.

The determination of the mineral or nonmineral character of lands under this grant must be upon evidence outside of any terms of the grant itself.

Northern Pac. R. Co. v. Wright, 51 Fed. 68, p. 72.

The mineral character of land is not established by proof that for several years it has been worked with a view of developing mineral, yet as a matter of fact there has

been no mineral whatever produced and only slight indications of the existence of mineral.

Dobler v. Northern Pac. R. Co., 17 L. D. 103, p. 104.

An ordinary assay certificate does not establish the value of a vein of mineral, and the most that can be said for it is that it indicates the presence of mineral, in the particular piece of matter under treatment.

Dobler v. Northern Pac. R. Co., 17 L. D. 103, p. 105.

3. JURISDICTION OF LAND DEPARTMENT.

The Land Department is vested with jurisdiction to determine the mineral character of the land within the limits of this grant, and until patent is issued it is the duty of the Department to exercise this jurisdiction.

Winscott v. Northern Pac. R. Co., 17 L. D. 274, p. 277.
Mongrain v. Northern Pac. R. Co., 18 L. D. 105.
See Central Pac. R. Co. v. Valentine, 11 L. D. 238.

All mineral lands were excepted from this grant, and the Land Department is the only tribunal clothed with authority to determine what lands are mineral, and when information is conveyed to the department satisfactorily showing that any land included within the limits of the grant is mineral in character the department may so include and authorize its entry under the mineral laws.

Winscott v. Northern Pac. R. Co., 17 L. D. 274, p. 277.

The question of the character of the land is a matter for determination in the first instance by the Land Department, and it has jurisdiction to pass upon all applications to purchase mineral lands.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 635.
Northern Pac. R. Co., In re, 32 L. D. 342.

The Land Department is required to determine the mineral character of lands within this grant, notwithstanding the fact that the railroad company admits that they are mineral in character.

Barden v. Northern Pac. R. Co., 19 L. D. 188, p. 189.

If the Land Department must decide what lands shall not be patented because sold, granted, or otherwise appropriated, or because subject to preemption or other claims or rights at the time the line of the railroad is definitely fixed, then it must also decide whether lands are excepted because they are mineral lands.

Barden v. Northern Pac. R. Co., 154 U. S. 288, pp. 328, 329.
Northern Pac. R. Co., In re, 32 L. D. 342, p. 343.

4. DETERMINATION OF DEPARTMENT CONCLUSIVE.

The Land Department is entrusted with the determination of the question whether land is mineral or not and whether such lands are subject to be patented, and such determination is conclusive.

Pacific Min., etc., Co. v. Spargo, 16 Fed. 348.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 614.
See Davis v. Weibbold, 139 U. S. 507.

When the Land Department, charged with the duty of determining primarily the character of the land within the limits of a railroad grant, after due investigation, as provided by the rules and regulations of the department, issues a patent for the land as falling within the terms of the grant such action is necessarily determinative of the character of lands patented.

Northern Pac. R. Co., In re, 32 L. D. 342, p. 344.

The officers of the Land Department are authorized to determine whether lands called for are swamp lands, timber lands, agricultural lands, or mineral lands, and so designate them in the patent which it issues.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 327.
Northern Pac. R. Co. v. Soderberg, 86 Fed. 49, p. 50.
Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 942.

Wherever Congress has provided for the disposition of any portion of the public lands of a particular character and authorized the officers of the Land Department to issue a patent for such land upon the ascertainment of certain facts, that department has jurisdiction to inquire into the existence of such facts, and in the absence of fraud, imposition, or mistake, its determination is conclusive against collateral attack.

Barden v. Northern Pac. R., 154 U. S. 288, p. 327.
Northern Pac. R. Co. v. Soderberg, 86 Fed. 49, p. 50.
See Smelting Co. v. Kemp, 104 U. S. 636, pp. 640, 641.
Steel v. Smelting Co., 106 U. S. 447, p. 450.

5. EFFECT OF RETURN OF SURVEYOR—PRESUMPTION.

The fact that a surveyor is required to indicate that valuable mines exist on land surveyed does not make such indications mines, and as he is not required by law to return lands as mineral no conclusion of law arises from such a return, but it is merely a statement of the officer, and his opinion as to the interior sections can not be of much value, and his report will constitute but a small element of consideration on the question of the true character of the land.

Winscott v. Northern Pac. R. Co., 17 L. D. 274, p. 276.
Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 21.
Tulare Oil & Min. Co. v. Southern Pac. R. Co., 29 L. D. 269, p. 271.

The return of the surveyor as to the mineral character of land raises a presumption as to its real character but this does not preclude a railroad company where such lands fall within the limits of its grant from proving the actual character of the land, and that it is in fact nonmineral, and the burden of proof to establish this fact is upon the railroad company.

Winscott v. Northern Pac. R. Co., 17 L. D. 274.
See Cole v. Markley, 2 L. D. 847.
Central Pac. R. Co. v. Valentine, 11 L. D. 238.
Northern Pac. R. Co. v. Marshall, 17 L. D. 545, p. 546.

The Northern Pacific Railroad Co. can not take lands classified as coal lands under its right of indemnity selection, in lieu of mineral lands lost to it under this grant.

Northern Pac. R. Co., In re, 39 L. D. 314, p. 316.

The reports of deputy surveyors that certain lands are agricultural and not mineral lands have the force of depositions, and are at least prima facie evidence of the character of the lands.

Cowell v. Lammers, 21 Fed. 200.
Kirby v. Lewis, 39 Fed. 66, p. 75.
Northern Pac. R. Co. v. Walker, 47 Fed. 681, p. 683.

Neither the surveyor general nor his subordinates was authorized to determine finally the character of any land granted, or make any binding report thereon, neither is he clothed with authority to specially examine as to these matters outside of his other duties, and his report in this respect has no binding force.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 320.
Leonard v. Lennox, 181 Fed. 760, p. 768.
Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 21.

6. TIME OF DETERMINATION.

a. LOCATION OF ROAD.

The date of the definite location of the road, with respect to lands within the place or granted limits, is the date of the attachment of the company's right so far as to cut off intervening, homestead, preemption, or other like claims, but the question of the mineral or nonmineral character of the lands and the consequent exclusion of such as are ascertained to be mineral is open until, pursuant to the act, a title passes.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 313.
Miller v. Thompson, 36 L. D. 492, p. 494.
Clipper Min. Co. v. Eli Min., etc., Co., 29 Colo. 377, p. 383.

The right to explore for mineral lands under the act of July 26, 1866 (14 Stat. 251), was in no wise impaired in respect of the lands granted the Northern Pacific Railroad Co. under this act, and by the subsequent acceptance from the railroad company of its map of general route and by the fixing of its general route, the company only acquired an inchoate right to the odd-numbered sections, and no right attached to any specific section until the road was definitely located and the map filed and accepted; and until such time Congress could dispose of the public lands on the general route of the road as it saw proper.

Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.

To determine whether any land was excepted from the grant its condition must be considered as it existed at the time the location of the road opposite the land was definitely fixed and the plat filed.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 132.

The mineral lands were not withdrawn from sale at the time of this grant prior to the time when the line of the company's railroad was definitely fixed, and a plat properly filed.

Northern Pac. R. Co. v. Cannon, 54 Fed. 252, p. 256.

The right of a mineral claimant can not be defeated by the railroad company by admitting the mineral character of the ground in controversy by claiming that the discovery of mineral was not made until after the definite location of its road.

Barden v. Northern Pac. R. Co., 19 L. D. 188, p. 189.

Under this grant lands only were reserved as mineral lands which were known to be such at the time the grant attached and when the line of the road was definitely fixed.

Francoeur v. Newhouse, 43 Fed. 236.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 603.

The railroad company has no standing under this act to contest any class of claims recognized by law which antedated the definite location of its road, and lieu lands were given it in place of all such.

Northern Pac. R. Co. v. Sanders, 49 Fed. 129, p. 134.
See Newhall v. Sanger, 92 U. S. 761.
Kansas Pac. R. Co. v. Dunmeyer, 113 U. S. 629.
Hastings & Dakota R. Co. v. Whitney, 132 U. S. 357.

b. OPEN UNTIL PATENT ISSUES.

The determination of whether lands are mineral or not can not be left to the accident of future ages.

Northern Pac. R. Co. v. Walker, 47 Fed. 681, p. 683.

The United States can, until patents are issued, perform any acts necessary to enable it to identify the mineral lands excepted from the grant to the Northern Pacific Rail-

road Co., and it can avail itself of all information by prospecting miners or otherwise which has resulted in disclosing and identifying mineral lands within the limits of the grant.

Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 623.

The character of the land granted by this act was open to inquiry at any time prior to the issuance of the patent, and the discovery of its mineral character at any time before patent necessarily excluded it from the grant.

Barden v. Northern Pac. R. Co., 154 U. S. 288.
Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 942.
Central Pac. R. Co. v. Valentine, 11 L. D. 238.
Northern Pac. R. Co., In re, 13 L. D. 691, p. 692.
Northern Pac. R. Co. v. Champion Consol. Min. Co., 14 L. D. 699, p. 700.

7. EXTENT AND VALUE OF MINERALS.

The mere fact that portions of land contained particles of gold or veins of gold-bearing quartz rock would not necessarily impress it with the character of mineral land within the meaning of the act of July 1, 1862 (12 Stat. 489), or of this act. It must at least be shown that the land contains metal in quantities sufficient to render it available and valuable for mining purposes.

Merrill v. Dixon, 15 Nev. 401, p. 407.
See Alford v. Barnum, 45 Cal. 482, p. 484.

To establish the mineral character of land it must be shown by a mineral claimant as a present fact that the land is mineral in character and more valuable for mining than agricultural purposes.

Dobler v. Northern Pac. R. Co., 17 L. D. 103, p. 105.
See Davis v. Weibbold, 139 U. S. 507.
Cutting v. Reininghaus, 7 L. D. 265.

Where the development of land claimed as mineral displays such promise that a prudent reasonable man will be justified in expending money and labor in legitimate mining operations the land must be held mineral.

Casey v. Northern Pac. R. Co., 15 L. D. 439, p. 440.

Lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws—that is, more valuable on account of such deposits than for agricultural purposes—are mineral lands within the meaning of that term as used in this grant and similar grants to railroad companies and to States.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 247.
Overruling Tucker v. Florida, etc., Co., 19 L. D. 414.
Alldritt v. Northern Pac. R. Co., 25 L. D. 349, p. 350.
Union Oil Co., In re (on review), 25 L. D. 351, p. 357.
Elliott v. Southern Pac. R. Co., 35 L. D. 149, p. 151.
Northern Pac. R. Co., v. Soderberg, 188 U. S. 526.
See Hayden v. Jamison, 26 L. D. 373, p. 374.
Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 601.
Richter v. Utah, 27 L. D. 95, p. 98.
Baudette v. Northern Pac. R. Co., 29 L. D. 248, p. 249.
Schrimpf v. Northern Pac. R. Co. 29 L. D. 327, p. 328.

C. SETTLEMENT ON COAL LAND—EFFECT AND PROTECTION.

A mere temporary settlement and squatter's claim on known coal land which is shortly afterwards abandoned without having made any substantial improvements, and to which no right has attached does not constitute such a claim or right as excepts the tract from the grant to the railroad company.

Brownfield v. Northern Pac. R. Co., 16 L. D. 144.
Northern Pac. R. Co. v. Collins, 14 L. D. 484.

A mere temporary settlement by an alien and a squatter claim on known coal land afterwards abandoned without making substantial improvements and to which no right or color of right attached under the law by virtue of such settlement does not constitute a claim or right within the meaning of this section of the grant to the railroad company.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 487.

A settlement can not be made or purchase be had under the coal land law of lands withdrawn under this act for the benefit of the railroad company.

Northern Pac. R. Co. v. Collins, 14 L. D. 484, p. 488.

This statute itself canceled any filing on the lands included therein where proof of occupancy of and payment for such land was not made within 30 months after the date of such filing.

United States v. Northern Pac. R. Co. 103 Fed. 389, p. 390.

D. INDEMNITY LANDS—SELECTION AND LOCATION.

All mineral lands were excepted from this grant and in lieu of which a like quantity of agricultural lands in odd-numbered sections nearest to the line of railway and within 50 miles thereof were to be selected.

Northern Pac. Land Grant, In re, 41 L. D. 571, p. 573.
Northern Pac. Land Grant, In re, 41 L. D. 576.
See Northern Pac. R. Co., In re, 8 L. D. 13, p. 14.

The selections provided for in this act are the indemnity selections authorized where lands within the primary limits had been sold or otherwise disposed of, but the act has no reference to the second indemnity belt, and it expressly excluded all mineral lands, thereby making a basis for the selection of lieu lands within the primary limits but not within the second indemnity belt.

Sante Fe Pac. R. Co. v. Northern Pac. R. Co., 37 L. D. 593, p. 595.

Congress intended to make the indemnity privilege on account of mineral losses; the same as for other losses, and there was no necessity for a separate provision excepting mineral lands from the grant and special provision for indemnity privilege on account of such losses.

Northern Pac. R. Co., In re, 39 L. D. 314, p. 316.

In selecting indemnity lands under the proviso of section 3 of this act the railroad company is not limited to the State in which the loss occurred by reason of the mineral character of the land.

Northern Pac. Land Grant, In re, 41 L. D. 571, p. 573.
See Northern Pac. R. Co., In re, 8 L. D. 13, p. 14.
Northern Pac. R. Co., In re, 20 L. D. 187.
Northern Pac. R. Co. v. Shepherdson, 24 L. D. 417.
Hagen v. Northern Pac. R. Co., 26 L. D. 312.
Northern Pac. R. Co., In re, 41 L. D. 576, p. 577.

While by this act the railroad company was entitled to odd-numbered sections within the primary limits of the grant or to indemnity for such sections as were disposed of, yet the general indemnity provisions of the original act limit the selections to certain prescribed limits, and the act of July 1, 1898 (30 Stat. 597, p. 620) limits the selections to be made thereunder to certain States.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 665.

All mineral lands except those containing coal and iron are expressly excluded from this grant and a like quantity of nonmineral lands given in lieu thereof; and the ques-

tion as to the mineral or nonmineral character of the lands is an open one up to the time of issuing the patent.

Kern Oil Co., v. Clarke, 30 L. D. 550, p. 562.
See Bardon v. Northern Pac. R. Co., 145 U. S. 535.
Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

A valid preemption claim existing at the time of the taking effect of this grant was excepted from the grant, and a subsequent cancellation of the preemption entry did not restore it to the public domain so as to bring it under the operation of previous legislation, which applied at the time to land then public, but only brought it within the category of public land for reference to future legislation; and it did not therefore by such cancellation pass under this grant, but under this act the company would be entitled to make its proper indemnity selection.

Bardon v. Northern Pac. R. Co., 145 U. S. 535, p. 537.

The words inclosed in parenthesis "and within 50 miles thereof," in the third proviso in this section do not appear in the Statutes at Large, but are found in the acts as passed and approved and as recorded in the State Department.

Northern Pac. Land Grant, In re, 41 L. D. 571.

E. CONVEYANCE BY RAILROAD COMPANY—RIGHT OF PURCHASER.

A purchaser of unpatented lands from a railroad company with knowledge that the lands contained cinnebar and that some form of reduction works had been established on the lands for the purpose of working the cinnebar is not an innocent purchaser, and the patent issued to the railroad company may be canceled.

McLaughlin v. United States, 107 U. S. 526, p. 528.

F. PATENT.

1. ISSUANCE—EFFECT OF EXCEPTIONS.
2. CANCELLATION FOR FRAUD.

1. ISSUANCE—EFFECT OF EXCEPTIONS.

If a patent is unadvisedly issued by the officers of the Government, but without fraud, the consequences must be borne by the Government, as the duty of determining the character of the land is reposed in the officers of the Land Department, and while the grant itself only passes title to nonmineral lands, yet a patent issued in proper form, after due examination and judgment rendered by the Land Department that the lands are nonmineral, estops the Government from contending to the contrary.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 330.
Northern Pac. R. Co., In re, 32 L. D. 342, p. 344.

The delay of the Government in issuing a patent can not have the effect of entitling the company to recover lands which it admits to be mineral, and the Government is not authorized to issue its patent without excepting mineral land, and it has had an opportunity to have the lands explored sufficiently to justify its declaration in the patent which would be taken as its determination that the lands were not mineral.

Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 331.
Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 941.
See Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 603.

There is no warrant for inserting in patents issued under this statute a clause "excepting all mineral lands should any such be found in the tracts aforesaid."

Northern Pac. R. Co., In re, 32 L. D. 342, p. 346.

2. CANCELLATION FOR FRAUD.

A patent to mineral lands in a railroad grant may be set aside and canceled where such lands were known to contain mineral and were valuable as such at the time of the grant, as all such lands were expressly excepted from the grant.

McLaughlin v. United States, 107 U. S. 526, p. 528.
Spong, In re, 5 L. D. 193.
Skinner v. Central Pac. R. Co., 2 Brainard's Legal Precedents 68.

30 STAT. 597, p. 620, 2 SUPP. R. S. 874, p. 875, JULY 1, 1898.

NORTHERN PACIFIC—MINERALS RESERVED.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1899.

Be it enacted, etc., * * * That where, prior to January 1, 1898, the whole or any part of an odd-numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Co., to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: * * *

Provided further, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it, or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal.

* * * * * * *

A. RAILROAD GRANT—NORTHERN PACIFIC.

1. PURPOSE OF ACT.
2. LANDS CLASSIFIED AS MINERAL NOT SELECTED—IRON AND COAL LANDS.
3. INDEMNITY SELECTIONS.
4. TITLE TO SELECTED LANDS.

1. PURPOSE OF ACT.

This act was passed primarily for the protection of individual claimants as against the Northern Pacific land grant and provided for a speedy adjustment of conflicting

claims within such land grant by first affording the individual claimant an opportunity to transfer his claim to other public lands of the character described or to retain the railroad lands formerly claimed, and in the latter event the company was to relinquish all its right to and interest in such land and to select other lands in lieu thereof.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 664.

The object of this statute is primarily to aid in the adjustment of the original grant, and the limitations imposed upon that grant by the classification act of February 26, 1895 (28 Stat. 683), must be given the same operation with respect to this adjustment act.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 137.

2. LANDS CLASSIFIED AS MINERAL NOT SELECTED—IRON AND COAL LANDS.

Where lands have been classified as mineral lands under the act of February 26, 1895 (28 Stat. 683), the railroad company has no right to select the lands so classified under this act, and such selections must be canceled.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 662.
Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 136.

This act is more restricted in its provisions than the act of 1895, authorizing the classification of minerals, and excludes coal and iron lands which were included under the original grant to the railroad company, but this does not authorize the reopening of an adjudication made under the act of 1895 (28 Stat. 683).

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 665.

Under this act the railroad company is not bound to relinquish among other lands those valuable for stone, iron, or coal.

Northern Pac. R. Co. v. Violette, 36 L. D. 182, p. 185.

Lands chiefly valuable for marble and slate is mineral in character, and if more valuable for these deposits than for agricultural purposes they must be regarded as mineral lands.

Schrimpf v. Northern Pac. R. Co., 29 L. D. 327, p. 328.
See Baudette v. Northern Pac. R. Co., 29 L. D. 248.

The right of the railroad company to make selection of lands in Montana was granted to the railroad company by this act, but such selections must be made of public lands not mineral and not valuable for stone, iron, or coal.

Northern Pac. R. Co., In re, 37 L. D. 408, p. 409.

3. INDEMNITY SELECTIONS.

This act limits the selections authorized to be made by the railroad company under the original act of July 2, 1864 (13 Stat. 365) to certain States, and selections under this act are nevertheless indemnity and when made become a part of and are in partial satisfaction of the original grant.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 665.

Lands ceded by the Indians were not subject to indemnity selection by the railroad company.

Northern Pac. R. Co., In re, 37 L. D. 408, p. 409.
Bradley v. Northern Pac. R. Co., 36 L. D. 7.

4. TITLE TO SELECTED LANDS.

A claim asserted by the railroad company under this act is predicated upon the original grant, July 2, 1864 (13 Stat. 365), as that act merely makes provision for the

substitution of a perfect title for the selected land for a disputed claim to the land on account of which substitution is made, the validity of the company's title to the base land not being the sole determinative factor.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 137.

A selection made under this act is not only on behalf of the railroad company, being made by its successor in interest, but is primarily on account of the Northern Pacific land grant, and any patent or evidence of title given to the Northern Pacific Railroad Co., or its successor in interest, under a claim predicated upon the original land grant to lands classified as mineral under the act of February 6, 1895 (28 Stat. 683) is necessarily void.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 665.
Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 137.

14 STAT. 83, JULY 4, 1866.

IRON MOUNTAIN—MINERAL LANDS RESERVED—COAL AND IRON.

AN ACT Making a grant of lands in alternate sections to aid in the construction and extension of the Iron Mountain Railroad, from Pilot Knob, in Missouri, to Helena, in Arkansas.

Be it enacted, etc., That there be, and is hereby, granted to the State of Missouri, for the purpose of aiding in the construction and extension of the Iron Mountain Railroad, from its present terminus at Pilot Knob to a point on the southern boundary line of the State of Missouri, every alternate section of land, designated by odd numbers, for 10 sections in width on each side of said road; but in case it shall appear when the route of said road is definitely fixed that the United States have sold any sections or parts thereof, granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in sections or parts of sections, to be selected as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated or to which the rights of preemption have attached, which lands thus selected shall be held by the State of Missouri for the use and purposes aforesaid, and for none other: Provided, That the lands so located shall be within the Ironton land district as now established and not more than 20 miles from the line of said road: And provided, further, That all mineral lands except those containing coal and iron, and any lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroad through the same, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That there be, and is hereby, granted to the State of Arkansas, for the purpose of aiding in the construction and extension of a railroad from the point where the Iron Mountain Railroad intersects the southern boundary line of Missouri, by the nearest and most practicable route, to a point at

or near the town of Helena, on the Mississippi River, every alternate section of land, designated by odd numbers, for 10 sections in width on each side of said road; but in case it shall appear, when the line of said road is definitely fixed, that the United States have sold any sections or parts thereof, granted as aforesaid, or that the right of preemption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land, in alternate sections, designated as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of preemption have attached, which lands thus selected shall be held by the State of Arkansas for the use and purposes aforesaid, and for none other: Provided, That the land so selected and located shall in no case be farther than 20 miles from the line of road when the same shall be located: And provided further, That all mineral lands, except those containing coal and iron, and any lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railway through the same, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

A. RAILROAD GRANT—IRON MOUNTAIN.

1. MINERALS EXCEPTED—EXTENT.
2. APPLICATION TO PUBLIC LANDS.

1. MINERALS EXCEPTED—EXTENT.

This act reserved mineral lands from the grant to the Iron Mountain Railroad Co., but it is not intended to be a general reservation of minerals in the public land.

Alabama, In re, 15 C. L. O. 7, p. 8.

This act refers to lands granted prior to and at the time of the passage of the act and not to lands to be thereafter granted, but lands granted by that and other prior acts of Congress.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 313.

2. APPLICATION TO PUBLIC LANDS.

The word "public," as applied in this act to lands, refers to all unsurveyed lands, whether the same or any portion thereof had been previously granted or not, and all lands are public within the meaning of this act until a survey is made, and the word is used to distinguish the unsurveyed from the surveyed and segregated lands.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 314.

The mineral lands to which the laws of the United States apply, as stated in this act, are the "mineral lands of the public domain," and lands between high and low tides belong to the State and not to the United States.

Morris, In re, 9 C. L. O. 5.

14 STAT. 94, JULY 13, 1866.

PLACERVILLE AND SACRAMENTO VALLEY—RIGHT OF WAY.

AN ACT Granting aid in the construction of a railroad and telegraph line from Folsom to Placerville in California.

Be it enacted, etc., That the right of way through the public lands be, and the same is hereby, granted to the Placerville & Sacramento Valley Railroad Co., * * * for the construction of a railroad and telegraph line from the town of Folsom to the town of Placerville, in said State; and the right is hereby given to said corporation to take from the public lands adjacent to the line of said road, material for the construction thereof; said right of way is granted to said railroad to the extent of 100 feet in width on each side of said road where it may pass over the public lands; also, all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations.

SEC. 2. And be it further enacted, That there be, and is hereby, granted to the Placerville & Sacramento Valley Railroad Co., its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land, not containing gold or silver, designated by odd numbers, to the amount of 10 alternate sections per mile, on each side of said railroad line, as said company may adopt, whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; Provided, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal.

14 STAT. 239, JULY 25, 1866.

CENTRAL PACIFIC—MINERALS—COAL AND IRON NOT EXCEPTED.

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon.

Be it enacted, etc., That the "California & Oregon Railroad Co.," organized under an act of the State of California, to protect certain parties in and to a railroad survey, "to connect Portland, in Oregon, with Marysville, in California," approved April 6, 1863, and such company organized under the laws of Oregon as the legislature of said State shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad, in California in the manner following, to wit: (here describing).

SEC. 2. And be it further enacted, That there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile

(10 on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than 10 miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than 60 continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated.

* * * * * * *

SEC. 10. And be it further enacted, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies: Provided, That the term "mineral lands" shall not include lands containing coal and iron.

A. RAILROAD GRANT—CENTRAL PACIFIC—CALIFORNIA AND OREGON.

B. MINERAL CHARACTER OF LAND, p. 1131.

C. INDEMNITY LAND—SELECTION AND TITLE, 1131.

A. RAILROAD GRANT—CENTRAL PACIFIC—CALIFORNIA AND OREGON.

1. MINERAL LANDS RESERVED.

Mineral lands were excepted from the grant made by the United States to the Central Pacific Railroad Co.

United States v. Central Pac. R. Co., 84 Fed. 218, p. 219.

Mineral lands were not only not granted but were expressly excepted from the operation of this act.

Central Pac. R. Co. v. De Rego, 39 L. D. 288, p. 290.

A patent under this statute which excepts mineral lands is invalid where the land was known at the time to be chiefly valuable for minerals.

United States v. Central Pac. R. Co., 84 Fed. 218, p. 220.
See Northern Pac. R. Co. v. Sanders, 166 U. S. 620.
Northern Pac. R. Co. v. Solderberg, 188 U. S. 526.
United States v. Central Pac. R. Co., 93 Fed. 871.

This grant being in præsenti takes effect as to a particular tract of land at its inception, and if the tract is then of the class or character of those specifically excepted, it remains so excepted whatever its status or character may be or become at a later date.

Central Pac. R. Co. v. De Rego, 39 L. D. 288, p. 290.

The discovery of the mineral character of land within the limits of the grant at any time prior to the issuance of patent therefor to the railroad company operates to except the same from the provisions of the grant.

Central Pac. R. Co. v. De Rego, 39 L. D. 288, p. 290.
See Barden v. Northern Pac. R. Co., 154 U. S. 288.

B. MINERAL CHARACTER OF LAND.

1. DETERMINATION—HEARING AND ADJUDICATION.

An adjudication by the Land Department that certain lands within this grant were mineral in character has the effect to except such lands from the operation of this grant and such adjudication is not impeached by anything subsequently transpiring, and a subsequent determination that the lands are in fact nonmineral does not operate to give the railroad company any title or interest in the lands.

Central Pac. R. Co. v. De Rego, 39 L. D. 288, p. 290.

A hearing and determination as to the mineral character of a tract of land under this grant will not preclude a subsequent inquiry as to the mineral character of the land on the protest of a mineral claimant at any time before patent is issued.

Oregon, etc., R. Co. v. Puckett, 39 L. D. 169, p. 171.
See Central Pac. R. Co. v. De Rego, 39 L. D. 288.

Though land was found to be mineral at a hearing authorized by law, and while the railroad company acquiesced in such finding, yet it is not shown that the company relinquished any claim it might have to the land by seeking to make indemnity selection in lieu thereof, but if the land was never in fact valuable for mineral, the department has no authority to issue patent to anyone other than the railroad company, as the company acquired an indefeasable right to a patent for all the land within the primary limits by the location and construction of its road, and when shown to be nonmineral the company will not be permitted to take indemnity and to deny its title.

Oregon, etc., R. Co. v. Puckett, 39 L. D. 169, p. 171.

A judgment as to the mineral character of lands can not be based entirely upon the return of the surveyor general.

California, etc., R. Co., In re, 16 L. D. 262.

C. INDEMNITY LAND—SELECTION AND TITLE.

When the railroad was located and the map made the right of the company to the odd-numbered sections became ipso facto fixed and absolute; but with respect to the lieu lands the right was only a float and attached to no specific tracts until selection was actually made in the manner prescribed.

Ryan v. Railroad Co., 99 U. S. 382, p. 386.

A selection made by the railroad company with the approval of the Secretary of the Interior of land within the permitted indemnity limits, and a patent for the same, gives the railroad company a valid title as against a Mexican claim in litigation at the date of the act, but which was finally rejected as invalid.

Ryan v. Railroad Co., 99 U. S. 382, p. 386.
Distinguishing Newhall v. Sanger, 92 U. S. 761.

14 STAT. 292, p. 295, JULY 27, 1866.

ATLANTIC AND PACIFIC—MINERALS—COAL AND IRON NOT EXCEPTED.

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from Missouri and Arkansas to the Pacific coast.

Be it enacted, etc., That (here naming certain persons) and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Atlantic & Pacific Railroad Co.," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be

impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. * * *

SEC. 3. And be it further enacted, etc. * * * Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within 20 miles thereof, may be selected as above provided: And provided further, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal. * * *

SEC. 18. And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic & Pacific Railroad herein provided for. * * *

A. RAILROAD GRANT—ATLANTIC & PACIFIC—SOUTHERN PACIFIC.

1. NATURE, CONSTRUCTION, AND EFFECT OF GRANT.
2. MINERAL LANDS EXCEPTED FROM GRANT.
3. KINDS OF MINERALS EXCEPTED.
4. OIL AS MINERAL—LANDS EXCEPTED.
5. INDEMNITY LANDS—MINERALS EXCEPTED.
6. CHARACTER OF LAND—DETERMINATION.
7. DECISIONS OF LAND DEPARTMENT CONCLUSIVE.
8. DISCOVERY OF MINERAL BEFORE PATENT—EFFECT.
9. PATENT.
   a. DETERMINATION OF CHARACTER OF LAND.
   b. EXTENT AND EFFECT OF EXCEPTING CLAUSE.
   c. NO PRIVATE ENTRY AFTER ISSUE.
10. PURCHASER FROM RAILROAD COMPANY—TITLE.
11. TITLE OF SOUTHERN PACIFIC TO OIL LANDS—BURKE CASE.

1. NATURE, CONSTRUCTION, AND EFFECT OF GRANT.

This act, while a grant in præsenti, did not of itself identify the land and could not do so, as this could not be done until the road was constructed, nor could it be known what lands would be free from other claims at the time of its location or what lands would be mineral, and accordingly the act provided for issuing patents to the company after the construction of the road; and the patents when issued were to be in confirmation of the company's "right and title," and were to be the legally appointed evidence that the lands described therein had passed to the company under the grant.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

This act was not a gift of land to the railroad company from the United States, but the act made a proposal to the railroad company to the effect that if it would locate, construct, and put into operation a certain line of railroad, then patents would issue to certain of the public lands within the descriptive terms of the grant, and its purpose was to bring about the construction of the railroad with the resulting advantages to the Government and the public, and on the construction of the road and the acceptance of the provisions of the act the parties were brought into contractual relation and its provisions became obligatory on both.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

The original grant under this act was to the Atlantic & Pacific Railroad Co., its successors and assigns, and the act of March 3, 1871 (16 Stat. 579, sec. 23), was to the Southern Pacific Railroad Co. in express terms and supplemental to the original and all mineral lands were expressly excluded from the operation of the act, and in lieu thereof a like quantity of unoccupied, nonmineral lands within certain limits were granted; but by express provision the word "mineral" was not to include iron or coal.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

2. MINERAL LANDS EXCEPTED FROM GRANT.

This grant excepts all mineral lands whether known or unknown at the time of the grant, and makes provision for substituting other lands if any within the grant are found to be mineral in character; but when the officers of the Land Department have examined and classified the lands within such grant and thereupon issue a patent to the grantee or its successor, the question of its mineral or nonmineral character is thereby determined, and any such tract is not thereafter open to a claim on the ground of its mineral character, as the patent is conclusive upon its mineral character.

Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 935.

Under the holding of the Supreme Court these railroad grants in themselves except all mineral lands whether known or unknown at the time of the grant, and other holdings are to the effect that after a patent is issued to a grantee under these railroad land grants, then no part of such grants are open to mineral claims, and these holdings can be reconciled on the theory that after the officers of the Land Department have classified the lands of such grants with reference to their mineral and nonmineral character and thereupon issued a patent therefor to the railroad companies, the patents are conclusive and binding upon the Government, and prevents any subsequent claim to any of such lands on the ground that they are mineral.

Roberts v. Southern Pac. R. Co., 186 Fed. 934.
See Barden v. Northern Pac. R. Co., 154 U. S. 288.
Shaw v. Kellogg, 170 U. S. 312.

The provisions of this act as to mineral lands were not a mere reservation of minerals, but an exclusion of mineral lands coupled with a provision that the railroad company should receive other lands not mineral in lieu thereof, and shows that a determination of the character of the lands, as mineral or nonmineral, was plainly contemplated, and Congress confided the identification of the lands included and excluded to the Land Department and directed that the indemnity lands should be selected under the direction of the Secretary of the Interior.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

Mineral lands are expressly excluded from the grant, and the railroad company can not select mineral lands as indemnity.

Southern Pac. R. Co. v. Allen Gold Min. Co., 13 L. D. 165.
See Central Pac. R. Co. v. Valentine, 11 L. D. 238.

Any land within this grant, if mineral in character, is open to exploration and purchase under the mining laws of the United States, as the grant to the railroad company expressly excepts mineral lands from its operation.

Walker v. Southern Pac. R. Co., 24 L. D. 172, p. 174.
See Swank v. California, 27 L. D. 411, p. 413.

Section 3 of this act expressly reserved all mineral lands from the operation of the act and gave the railroad company the right to select indemnity land in lieu thereof.

Walker v. Southern Pac. R. Co., 24 L. D. 172, p. 173.

By express provision of this act all mineral lands are excluded from its operation except lands containing iron or coal.

Hutton v. Forbes, 31 L. D. 325, p. 328.

The grant to the railroad company included every alternate section of public land not mineral.

Jacob, In re, 7 C. L. O. 83.

3. KINDS OF MINERALS EXCEPTED.

Mineral lands which in law exclude them from a railroad grant include not merely metalliferous minerals, but all such as are chiefly valuable for other deposits of a mineral character which are useful in the arts or valuable for purposes of manufacture.

Southern Pac. R. Co., In re, 41 L. D. 264, p. 265.

This act does not except from the grant as mineral such lands as were simply valuable for their deposit of limestone, as such lands under the laws then in force were not subject to disposal as mineral, but were disposed of as agricultural when used for agricultural purposes.

Jacob, In re, 7 C. L. O. 83.

4. OIL AS MINERAL—LANDS EXCEPTED.

Oil or petroleum lands are mineral lands within the meaning of that term in this grant.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
See Ohio Oil Co. v. Indiana Co., 177 U. S. 190, p. 202.
Northern Pac. R. Co. v. Soderberg, 188 U. S. 526.

Congress has at various times spoken of oil as a mineral.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

The Land Department has regarded petroleum as a mineral and has treated lands chiefly valuable therefor as mineral lands.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

Deposits of petroleum oil come within the definition of mineral character of land and is sufficient to exclude such land from a railroad grant if discovered before patent issues.

Southern Pac. R. Co., In re, 41 L. D. 264, p. 265.

The mineral character of land is prima facie established, sufficient to exclude it from a railroad grant, by its proper classification as oil-bearing land, and the Secretary is thereafter without power to issue a patent for such land.

Southern Pac. R. Co., In re, 41 L. D. 264 p. 265.
California, In re, 41 L. D. 592, p. 597.

5. INDEMNITY LANDS—MINERALS EXCEPTED.

Section 18 of this act grants the Southern Pacific Railroad Co. land subject to all the conditions and limitations and under the regulations as that of the Atlantic & Pacific

Railroad, and accordingly lands chiefly valuable for mineral deposit or asphaltum are not subject to selection as indemnity lands under the grant that expressly excepts mineral lands.

Tulare Oil & Min. Co. v. Southern Pac R. Co., 29 L. D. 269, p. 272.

6. CHARACTER OF LAND—DETERMINATION.

The character of the land in all such grants is a question for the Land Department, the same as are the qualifications of the applicant and his performance of the acts upon which the right to receive the title depends, and when a patent issues it is to be taken, as against all collateral attack, as affording conclusive evidence of the nonmineral character of the land and of the regularity of the act and proceedings resulting in its issue, and upon a direct attack, as affording such presumptive evidence thereof as to require plain and convincing proof to overcome it.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
See Smelting Co. v. Kemp, 104 U. S. 636, p. 641.
Steel v. Smelting Co., 106 U. S. 447.

In the nature of things under such a grant there must be some point of time when the character of the land must be finally determined and for the interests of all concerned there can be no better point to determine this question than at the time of issuing the patent; and there is no authority to issue a patent, which, in fact, only says that if the lands described hereafter turn out to be agricultural lands then they are granted, but if they turn out to be mineral lands then they are not granted.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
Cowell v. Lammers, 21 Fed. 200.

7. DECISIONS OF LAND DEPARTMENT CONCLUSIVE.

In cases arising before the Land Department where there is difficulty on the part of its officers to ascertain with accuracy whether the lands to be disposed of are to be deemed mineral lands or agricultural lands, these officers will be governed by the knowledge of the lands obtained at the time as to their real character, and this determination of the facts by these officers that they are one or the other is conclusive.

Roberts v. So. Pac. R. Co., 186 Fed. 934, p. 935.
Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 329.

Congress intended that the Land Department should determine the character of the lands granted as to their being mineral or nonmineral by an examination and classification before patent, and that the patents issued pursuant to such classification should convey the Government's entire title to the land embraced in any such patent.

Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 940.

If the land officers are induced by fraud or false proofs to issue a patent for mineral lands under a nonmineral-land law, or after such patent is issued by inadvertence, the Government may maintain a suit to annul the patent, or a mineral claimant who had acquired a vested right in the land, might maintain a bill to have the patentee declared a trustee for him; but such a patent is merely voidable and is not void, and can not be attacked by strangers who had no interest in the land at the time the patent was issued.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
See Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 313.
Diamond Coal Co. v. United States, 233 U. S. 236, p. 239.

8. DISCOVERY OF MINERAL BEFORE PATENT—EFFECT.

A discovery of the mineral character of land within a railroad grant at any time before issue of patent will defeat the grant.

Southern Pac. R. Co., In re, 41 L. D. 264, p. 265.
See Barden v. Northern Pac. R. Co., 154 U. S. 288, p. 329.

9. PATENT.

a. DETERMINATION OF CHARACTER OF LAND.

The fact that patents to the railroad company under this grant contain a clause "excluding and excepting all mineral lands, should any such be found in the tracts aforesaid," does not necessarily show that the Land Department did not consider or determine whether the lands were mineral or not; and the practice in the Land Department under this grant, as well as under grants to the Pacific Railroad Co., shows that care was taken, precautions exercised, affidavits required, examinations made, lists of lands made and scrutinized, and hearings were often had in in the local land office to determine whether lands listed or desired to be patented were mineral or otherwise, and plats were frequently taken and considered by the Secretary of the Interior; and such excepting clause was accordingly never intended to take the place of an inquiry in the character of the lands described or to dispense with the determination of that question, and its presence in these patents does not signify that no inquiry or determination was had.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

Under this grant the issue of a patent is authorized if the lands are patentable, and if not patentable the patent is unauthorized, and the issue of a patent is as conclusive evidence of the determination of the fact of patentability, upon a collateral attack, in the one case as in the other; and if it should subsequently appear that all the land described is in fact mineral, then the exception would be as broad as the grant and would be void as an exception.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
Cowell v. Lammers, 21 Fed. 200.

The issue of a patent by the Land Department to a railroad company under the congressional grant was a determination by that tribunal that the lands included in the patent when granted to the railroad company, and under the proviso of the act, were not mineral at the date of the issuance of the patent.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
See Deffeback v. Hawke, 115 U. S. 392, p. 406.
Spong, In re, 5 L. D. 193.

This act plainly shows that patents should not issue for lands excluded by its terms and to which the railroad company was not to have any right or title, and the direction respecting the issue of patents necessarily carried with it the power and the duty of determining in every instance whether the land came within the terms of the grant, or for any reason was excluded from it, and patent was to be granted or refused accordingly; and upon this theory the Land Department has uniformly proceeded with the administration and adjustment of this and other railroad grants, and this theory has been approved by the courts.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

b. EXTENT AND EFFECT OF EXCEPTING CLAUSE.

A patent to lands under this grant should in terms exclude therefrom all mineral lands other than coal or iron lands.

Atlantic, etc., R. Co., In re, 12 L. D. 116, p. 117.

Officers of the Land Department have no authority to insert in a patent to a railroad company a clause excepting from the lands described in its granting clause "all mineral lands if any such be found in the tract aforesaid."

Roberts v. Southern Pac. R. Co., 186 Fed. 934, pp. 936, 945.
See Shaw v. Kellogg, 170 U. S. 312.

The officers of the Land Department, being merely agents of the Government, have no authority to insert in a patent under such a grant any other terms than those of conveyance, with recitals showing compliance with the conditions which the law prescribes, and such a patent carries with it such rights to the land described as the law confers, and no other, and these rights can neither be enlarged nor diminished by any reservations of the officers of the Land Department, resting for their fitness only upon the judgment of those officers.

Burke v. Southern Pac. R. Co., 234 U. S. 669.
See Deffeback v. Hawke, 115 U. S. 392.
Davis v. Weibbold, 139 U. S. 507.
Shaw v. Kellogg, 170 U. S. 312.
Sullivan v. Iron Silver Min. Co., 143 U. S. 431, p. 441.

C. NO PRIVATE ENTRY AFTER ISSUE.

Under this grant and after a patent had been issued by the Government to the successor of the grantee pursuant to the authority expressed in the grant, a citizen of the United States can not lawfully enter upon any tract of land many years after the patent has been issued and claim any such tract as mineral land, though the patent contained an exception excluding all mineral lands if any such should be found in the tracts so patented.

Roberts v. Southern Pac. R. Co., 186 Fed. 934, p. 935.
Burke v. Southern Pac. R. Co., 234 U. S. 669.

Lands listed to the railroad company under the provisions of this act are not subject to entry by a mineral claimant on account of a small quantity of oil seeping from a stratum of bituminous sandstone or shale some 6 feet in thickness.

Southwestern Oil Co. v. Atlantic & Pac. R. Co., 39 L. D. 335, p. 336.

10. PURCHASER FROM RAILROAD COMPANY—TITLE.

A purchaser from the railroad company of lands which are by him known to be mineral and known to be thereby excluded from the grant is not a purchaser in good faith.

Hutton v. Forbes, 31 L. D. 325, p. 329.

Where lands are not known by a purchaser to be mineral lands at the time of his purchase and to be excluded thereby from the grant, no subsequent discovery or development of minerals upon such lands can affect the question of the good faith of his purchase.

Hutton v. Forbes, 31 L. D. 325, p. 329.

11. TITLE OF SOUTHERN PACIFIC TO OIL LANDS—BURKE CASE.

In the most recent construction of this act in a case involving title to vast quantities of valuable oil lands in California, the Supreme Court concluded its opinion by making concrete answers to the seven propositions submitted, which, with the answers, are as follows:

1. Did the said grant to the Southern Pacific Railroad Co. include mineral lands which were known to be such at or prior to the date of the patent of July 10, 1894?

Answer. Mineral lands, known to be such at or prior to the issue of patent, were not included in the grant, but excluded from it, and the duty of determining the character

of the lands was cast primarily on the Land Department, which was charged with the issue of patents.

2. Does a patent to a railroad company under a grant which excludes mineral lands, as in the present case, but which is issued without any investigation upon the part of the officers of the Land Office or of the Department of the Interior as to the quality of the land, whether agricultural or mineral, and without hearing upon or determination of the quality of the lands operate to convey lands which are thereafter ascertained to be mineral?

Answer. A patent issued in such circumstances is irregularly issued, undoubtedly so, but as it is the act of a legally constituted tribunal and is done within its jurisdiction, it is not void and therefore passes the title subject to the right of the Government to attack the patent by a direct suit for its annulment if the land was known to be mineral when the patent issued.

3. Is the reservation and exception contained in the grant in the patent to the Southern Pacific Railroad Co. void and of no effect?

Answer. The mineral land exception in the patent is void.

4. If the reservation of mineral lands as expressed in the patent is void, then is the patent, upon a collateral attack, a conclusive and official declaration that the land is agricultural and that all the requirements preliminary to the issuance of the patent have been complied with?

Answer. It is conclusive upon a collateral attack.

5. Is petroleum or mineral oil within the meaning of the term "mineral" as it was used in said acts of Congress reserving mineral land from the railroad land grants?

Answer. Petroleum lands are mineral lands within the meaning of that term in railroad land grants.

6. Does the fact that the appellant was not in privity with the Government in any respect at the time when the patent was issued to the railroad company prevent him from attacking the patent on the ground of fraud, error, or irregularity in the issuance thereof as so alleged in the bill?

Answer. It does.

7. If the mineral exception clause was inserted in the patent with the consent of the defendant, Southern Pacific Railroad Co., and under an understanding and agreement between it and the officers of the Interior Department that said clause should be effective to keep in the United States title to such of the lands described in the patent as were in fact mineral, are the defendants, Southern Pacific Railroad Co. and the Kern Trading & Oil Co., estopped to deny the validity of said clause?

Answer. No; such an agreement is of no greater force as an estoppel than the exception in the patent. The latter being void, the patent passes the title and is not open to collateral attack, or to attack by strangers whose only claim was initiated after the issue of the patent.

Burke v. Southern Pac. R. Co., 234 U. S. 669.

16 STAT. 382, JUNE 28, 1870.

SOUTHERN PACIFIC—PATENTS.

JOINT RESOLUTION Concerning the Southern Pacific Railroad of California.

Be it resolved, etc., That the Southern Pacific Railroad Co. of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the 3d day of January, 1867; and upon the construction of each section of said road, in the manner and within

the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act of making a grant of land to said company, approved July 27, 1866, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July 27, 1866, expressly saving and reserving all rights of actual settlers together with the other conditions and restrictions provided for in the third section of said act.

See 14 Stat. 292, sec. 18, p. 1122.

15 STAT. 187, JULY 25, 1868.

SOUTHERN PACIFIC—EXTENSION OF TIME.

AN ACT To extend the time for the construction of the Southern Pacific Railroad in the State of California.

Be it enacted, etc., That the Southern Pacific Railroad Co. of the State of California shall, instead of the times now fixed by law for the construction of the first section of its road and telegraph line, have until the 1st day of July, 1870, for the construction of the first 30 miles, and they shall be required to construct at least 20 miles every year thereafter, and the whole line of their road within the time now provided by law.

A. RAILROAD GRANT—SOUTHERN PACIFIC.

1. RETURN OF SURVEYOR GENERAL—ENTRY WITHOUT NOTICE.
2. APPLICATION FOR PATENT—PROTEST—HEARING.

1. RETURN OF SURVEYOR GENERAL—ENTRY WITHOUT NOTICE.

The return of the surveyor general does not warrant the local officers upon presentation of an application for mineral patent to land that has been segregated from the public domain by grant to a railroad company in permitting an entry to be made without due and proper notice to such company.

Southern Pac. R. Co. v. Griffin, 20 L. D. 485, p. 486.

Where lands returned as mineral by a surveyor have been many times explored by those in search of mineral lands, it is fair to presume that all such mineral lands have been located, and the return in such case is not controlling.

Benjamin v. Southern Pac. R. Co., 21 L. D. 387, p. 389.

2. APPLICATION FOR PATENT—PROTEST—HEARING.

In an application for patent for lands under this grant a protest containing no specific allegation as to the presence of mineral in any particular tract covered by the application will not warrant a hearing as to the character of the land.

Benjamin v. Southern Pac. R. Co., 21 L. D. 387, p. 389.

14 STAT. 338, JULY 28, 1866.

ARKANSAS AND MISSOURI—MINERAL LANDS EXCEPTED.

AN ACT To revive and extend the provisions of an act granting the right of way and making a grant of land to Arkansas and Missouri, to aid in the construction of a railroad from the Mississippi River to the Texas boundary.

Be it enacted, etc., That the act "Granting the right of way and making a grant of lands to the States of Arkansas and Missouri to aid in the construction of a railroad from a point upon the Mississippi opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved February 9, 1853, with all the provisions therein made, be, and the same is hereby, revived and extended for the term of 10 years from the passage of this act; and all the lands therein granted, which reverted to the United States, under the provisions of said act, be, and the same are hereby, restored to the same custody, control, and condition, and made subject to the uses and trusts in all respects as they were before and at the time such reversion took effect: Provided, That all mineral lands within the limits of this grant and the grant made in section 2 of this act are hereby reserved to the United States: And provided further, That all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the company or corporation owning or operating said road or branches respectively, when so required by the Government of the United States.

A. GRANT TO STATES—ARKANSAS AND MISSOURI.

1. MINERAL LANDS EXCEPTED.

This act granting lands to Arkansas and Missouri expressly reserved all mineral lands within the grant.

St. Louis, etc., R. Co. v. McGee, 115 U. S. 469, p. 472.

14 STAT. 543, MARCH 2, 1867.

MINERAL LANDS EXCEPTED—CALIFORNIA.

AN ACT Granting lands to aid in the construction of a railroad from Stockton to the town of Copperopolis, Cal.

Be it enacted, etc. * * *

SEC. 2. That there be, and is hereby, granted to the State of California, for the construction of the said Stockton & Copperopolis Railroad, its successors and assigns, for the purpose of aiding in the construction of said railroad, upon the condition prescribed in section 1 of this act, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land designated by odd numbers to the extent of five alternate sections on each side of said railroad line as said company may adopt, whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is definitely fixed and a plot thereof filed in the office of the Commissioner of the

General Land Office. And whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, or covered by private land grants, or occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company, in lieu thereof, on the line of said road, within 20 miles of the same, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers: Provided, That all lands containing gold, or silver, or copper, be, and the same are hereby, excluded from the operations of this act, and in lieu thereof, a like quantity of unoccupied and unappropriated lands, in odd-numbered sections, within the said 20 miles of the line of said road, may be selected, as above provided: And provided further, That the word "mineral," where it occurs in this act, shall not be held to include iron or coal.

16 STAT. 94, MAY 4, 1870.

OREGON CENTRAL—MINERAL LANDS EXCEPTED.

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, Oreg.

Be it enacted, etc., That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamkill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Co., now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of 100 feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary land for depots, stations, sidetracks, and other needful uses in operating the road, not exceeding 40 acres at any one place; and, also, each alternate section of the public land, not mineral, excepting coal or iron land, designated by odd numbers nearest to said road, to the amount of 10 such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this act. And in case the quantity of 10 full sections per mile can not be found on each side of said road, within the said limits of 20 miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than 25 miles from the track of said road to make up such deficiency.

16 STAT. 573, p. 576, MARCH 3, 1871.

TEXAS PACIFIC—MINERALS EXCEPTED—COAL AND IRON NOT EXCEPTED.

AN ACT To incorporate the Texas Pacific Railroad Co. and to aid in the construction of its road.

Be it enacted, etc., That (certain persons here named) and all such persons as shall or may be associated with them, and their successors, are hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Co., and by that name shall have perpetual succession, and shall be able to sue and

be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and use a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, Cal., pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act.

* * * * * * *

SEC. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for, there is hereby granted to the said Texas Pacific Railroad Co., its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and 10 alternate sections of land per mile on each side of said railroad in California, where the same shall not have been sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of said lands shall have been sold, reserved, occupied, or preempted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than 10 miles beyond the limits of said alternate sections first above named, and not including the reserved numbers. If, in the too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled can not be selected immediately on the line of said railroad, or in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest the line of said railroad may be selected as above provided; and the word "mineral," where it occurs in this act, shall not be held to include iron or coal: Provided, however, That no public lands are hereby granted within the State of California further than 20 miles on each side of said road, except to make up deficiencies as aforesaid, and then not to exceed 20 miles from the lands originally granted. * * *

SEC. 23. That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Co. of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions

as were granted to said Southern Pacific Railroad Co. of California, by the act of July 27, 1866: Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Co. or any other railroad company.

A. RAILROAD GRANT—TEXAS PACIFIC.

1. INDEMNITY LANDS—PETROLEUM LANDS EXCEPTED.

Under the power given the railroad company to sell indemnity lands the railroad can not select lands containing petroleum.

Union Oil Co., In re (on review), 25 L. D. 351, p. 352.
See Union Oil Co., In re, 23 L. D. 222.

16 STAT. 580, MARCH 3, 1871.

SOUTH & NORTH RAILROAD—MINERAL LANDS EXCEPTED.

AN ACT To renew certain grants of land to the State of Alabama.

Be it enacted, etc., That the grant of lands made to the State of Alabama by the act of Congress approved June 3, 1856, entitled "An act granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State," to assist in the building of a railroad from the city of Montgomery, Ala., to some point on the Alabama and Tennessee State line, in the direction of Nashville, is hereby revived and renewed for the use and benefit of the South & North Alabama Railroad Co., subject to all the conditions and restrictions contained in the act referred to, and subject to the further limitation, that if the said railroad is not completed within three years from the passage of this act no further sale shall be made for the benefit of said road, and the lands unsold shall revert to the United States: Provided, That the lands granted by the act hereby revived, except mineral lands, shall be sold to actual settlers only, in quantities not greater than one-quarter section to any one purchaser, and for a price not exceeding $2.50 per acre.

* * * * * * *

17 STAT. 339, JUNE 8, 1872.

DENVER & RIO GRANDE—RIGHTS CONFERRED.

AN ACT Granting the right of way through the public lands to the Denver & Rio Grande Railway Co.

Be it enacted, etc., That the right of way over the public domain, 100 feet in width on each side of the track, together with such public lands adjacent thereto as may be needed for depots, shops, and other buildings for railroad purposes, and for yard room and sidetracks, not exceeding 20 acres at any one station, and not more than one station in every 10 miles, and the right to take from the public lands adjacent thereto stone, timber, earth, water, and other material required for the construction and repair of its railway and telegraph line be, and the same are hereby, granted and confirmed unto the Denver & Rio Grande Railway Co., a corporation created under the incorporation laws of the Territory of Colorado, its successors and assigns; * * * and the same rights, powers, and privileges

conferred upon the Union Pacific Railroad Co. by section 3 of an act approved July 2, 1864, are hereby conferred upon the above-named company, its successors and assigns: * * *

A. RAILROAD GRANT—DENVER & RIO GRANDE.

1. MINING CLAIMS SUBJECT TO GRANT.

A mineral claimant must take his claim subject to the right of occupation by a railroad company for station purposes.

McCarthy, In re, 14 L. D. 105, p. 110.

This act was an absolute unconditional grant in presenti, which acquired precision upon the location of the company's road, and in an action by a mineral claimant for damages for appropriation of his claim for a right of way, the act itself is not proof sufficient to show that the mining claim was within the limits of such right of way.

Jackson v. Dines, 13 Colo. 90, p. 97.

24 STAT. 477, MARCH 3, 1887.

SALT LAKE & FORT DOUGLAS—RIGHTS CONFERRED.

AN ACT Granting a right of way through certain public lands in Utah.

Be it enacted, etc., That a right of way is hereby granted to the Salt Lake & Fort Douglas Railway, a corporation duly organized under the laws of the Territory of Utah, across the Fort Douglas Military Reservation, by a route surveyed and laid down on a properly certified map, a copy of which is now on file with the Secretary of War, which location has been submitted to and approved by the post commander and the commander of the department. Said right of way hereby granted shall not exceed 100 feet in width through said reservation, except where sidetracks, spurs, turntables, or stations are located or to be located; and at such points the right of way shall not exceed 200 feet on each side of the main track and not exceeding 2,000 feet in length. * * *

SEC. 2. That the grant contained in the first section of this act is made upon the express condition that the Salt Lake Rock Co., its successors and assigns, shall first convey to the United States a title in fee simple, free and clear of all encumbrance, to the approval of the Attorney General of the United States, of the following lands, water, and water rights in Salt Lake County, Territory of Utah, to wit: Sections numbered 25 and 35, township numbered 1, range numbered 1 east, and section numbered 19, township numbered 1, range numbered 2 east, with all the water and water rights thereon, excepting and reserving to the said company, its successors and assigns, all stone, brick clay, and other building materials, and all minerals in and upon said lands, and the right to enter thereon and prospect for, develop, quarry, and remove such stone, brick clay, and other building materials, and all such minerals, with the right to locate and construct all necessary railroads, wagon roads, and trails, to give the said company the benefit and enjoyment of the rights reserved to it, and its successors and assigns, by this act, and also, in addition thereto, the right of use of so much water as may be necessary for engine purposes; and the said reservations are hereby confirmed as against the United States: * * *

A. DESERT LANDS.

Desert lands under this act are those exclusive of timber and mineral lands.

Wyoming, In re, 38 L. D. 508, p. 509.

24 STAT. 556, MARCH 3, 1887.

ADJUSTMENT OF GRANTS—FORFEITURE OF UNEARNED LANDS.

AN ACT To provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, etc.

Be it enacted, etc., That the Secretary of the Interior be, and is hereby authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States, within 90 days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or preemption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application, shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: Provided, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: And provided also, That he did not voluntarily abandon said original entry: And provided further, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon. * * *

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the

ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: Provided, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the preemption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said preemption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: Provided further, That this section shall not apply to lands settled upon subsequent to the 1st day of December, 1882, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases. * * *

SEC. 7. That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such State, corporation or individual would be rightfully entitled.

A. RAILROAD GRANT—ADJUSTMENT.
B. MINERAL CHARACTER OF LAND—SUBSEQUENT DISCOVERY OF MINERALS.
C. APPLICATION TO PURCHASE—SHOWING, p. 1147.
D. PURCHASER FROM RAILROAD COMPANY—TITLE TO MINERALS, p. 1147.

A. RAILROAD GRANT—ADJUSTMENT.

1. APPLICATION OF ACT—PATENT FOR MINERAL LANDS.

This statute applies to a patent erroneously issued by Government officers for lands which were valuable for mineral but purchased as agricultural lands.

United States v. Central Pac. R. Co., 84 Fed. 218, p. 221.

Where lands within the limits of a railroad grant are known to be mineral when the patent is granted by mistake or oversight, then the United States has an interest in such lands which will warrant the institution of proceedings to set aside a patent.

Bullock v. Central Pac. R. Co., 11 L. D. 590, p. 592.
McLaughlin v. United States, 107 U. S. 526.
Western Pac. R. Co. v. United States, 108 U. S. 510.
Mullan v. United States, 118 U. S. 271.
Winona, etc., R. Co., In re, 9 L. D. 649.
Central Pac. R. Co. v. Valentine, 11 L. D. 238.
See Plymouth Lode, In re, 12 L. D. 513.

This act was intended to cover contracts other than those evidenced by deed, as it applies exclusively to lands sold or contracted away by railroad companies before they had themselves obtained title.

Austin v. Luey, 21 L. D. 507, p. 511.

B. MINERAL CHARACTER OF LAND—SUBSEQUENT DISCOVERY OF MINERALS.

The known character of the land at the date of the purchase from the company is the determining factor in a controversy involving the character of the land applied for under this act, and in order to except lands from purchase for the reason that they

contained minerals, it must appear that the lands were of known mineral character at the date of the sale, by the land-grant company, and were such that the purchaser should have known at the time of his purchase were excepted from the grant to the railroad company.

Clogston v. Palmer, 32 L. D. 77, p. 82.

Lands otherwise coming within the provisions of this section and not known to be mineral in character at the time of their purchase from the railroad company, and which are subsequently found to be mineral, are not for that reason excepted from the provisions of this act.

Clogston v. Palmer, 32 L. D. 77, p. 80.

C. APPLICATION TO PURCHASE—SHOWING.

Under this section an application for purchase should show that the land applied for was of the numbered sections prescribed in the grant and was coterminous with the constructed parts of the railroad and was sold by the company as a part of its grant to one under whom the applicant claims, and is excepted from the operation of the grant by reason of the prior grant to the Atlantic & Pacific Railroad Company, and at the date of the sale it was not in the bona fide occupancy of adverse claimants under preemption or homestead laws, and that it has not been settled upon subsequent to the first day of December, 1882, and the applicant is a citizen of the United States and a bona fide purchaser by assignment of the Southern Pacific Railroad Company's contract and deed.

Clogston v. Palmer, 32 L. D. 77, p. 79.

The right to purchase from the Government under this section is not limited to the immediate purchaser from the company, but may be exercised by any bona fide purchaser who has the requisite qualifications as to citizenship, without reference to the qualifications of his immediate grantor or of any intervening purchaser, and the provisions of the section extend to bona fide purchases made since the date of the act.

Clogston v. Palmer, 32 L. D. 77, p. 79.

D. PURCHASER FROM RAILROAD COMPANY—TITLE TO MINERALS.

Under this section the right of a purchaser from the railroad company can not be defeated by a mineral claimant unless the proof shows as a present fact that the land is more valuable for mineral therein than for agricultural purposes.

Austin v. Luey, 21 L. D. 507, p. 511.

The grant to the railroad did not except lands valuable for coal.

Santa Fe Pac. R. Co., In re, 39 L. D. 135, p. 136.

Congress, knowing that the railroad company acquired title to coal land under its grant, clearly provided in this act that the company could relinquish any section of land acquired which is occupied by a small holding settler, thus protecting the home; the land so relinquished may be patented to the settler if he can show himself qualfied under the term of the act, and as the act provides that the railroad company relinquishing such land may select in lieu thereof "vacant public land of equal quality," the company may, upon relinquishing land valuable for coal, select in lieu thereof coal land equal in value to those relinquished.

Santa Fe Pac. R. Co., In re, 39 L. D. 135, p. 138.

II. RAILROAD LANDS—CLASSIFICATION.

28 STAT. 683, 2 SUPP. R. S. 385, FEBRUARY 26, 1895.

CLASSIFICATION OF MINERAL LANDS—NORTHERN PACIFIC.

AN ACT To provide for the examination and classification of certain mineral lands in the States of Montana and Idaho.

Be it enacted, etc., That the Secretary of the Interior be, and is hereby, authorized and directed, as speedily as practicable, to cause all lands within the land districts hereinafter named in the States of Montana and Idaho within the land grant and indemnity land grant limits of the Northern Pacific Railroad Co., as defined by an act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2, 1864 (13 Stat. 365), and acts supplemental to and amendatory thereof, to be examined and classified by commissioners to be appointed as hereinafter provided, with special reference to the mineral or non-mineral character of such lands, and to reject, cancel, and disallow any and all claims or filings heretofore made, or which may hereafter be made, by or on behalf of the said Northern Pacific Railroad Co. on any lands in said land districts which upon examination shall be classified as provided in this act as mineral lands.

SEC. 2. That for the purpose of making the examination herein provided for there shall be appointed by the President of the United States, as soon as practicable after the passage of this act, three commissioners for each of the following land districts, to wit: The Bozeman, Helena, and Missoula land districts, in the State of Montana, and the Couer d'Alene land district, in the State of Idaho, at least one of whom for each district shall be a practical miner and a resident of such district; and said persons so appointed for each district shall constitute a board of commissioners to perform within such district the duties herein prescribed. They shall each receive for their compensation $10 for each day they may be actually engaged in the performance of their duties, which shall include their transportation and subsistence expenses, but the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of $2,500; and their accounts shall be audited by the Secretary of the Interior and paid monthly. Before entering upon their duties each of said commissioners shall take an oath to faithfully perform the duties of his office. Said commissioners shall make examination of the lands herein mentioned within their respective districts, and may also take the testimony of witnesses as to the mineral or non-mineral character of any of said lands, and receive any other evidence relating to said matter, and shall have power to summon witnesses to appear before them, and to administer oaths; and they shall, immediately upon their appointment, proceed to examine and classify the lands herein mentioned within their respective districts, as provided in this act, and shall fully complete said classification within the

term of 4 years from the date of this act. The oath of office of said commissioners shall be filed by them in the office of the Commissioner of the General Land Office. All testimony taken by said commissioners shall be reduced to writing, subscribed by the witnesses, and filed with the report of the commissioners hereinafter required. The action or decision of a majority of said commissioners in each district shall control in all matters herein provided for. That the commissioners shall perform the work of examination and classification herein directed according to such rules and regulations as the Secretary of the Interior shall prescribe.

SEC. 3. That all said lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation, and purchase under the provisions of the United States mining laws, and the commissioners, in making the classification herein provided for, shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location, or character. The classification herein provided for shall be by each legal subdivision where the lands have been surveyed. If the lands examined are not surveyed, classification shall be made by tracts of such extent, and designated by such natural or artificial boundaries to identify them, as the commissioners may determine. Where mining locations have been heretofore made or patents issued for mining ground in any section of land, this shall be taken as prima facie evidence that the 40-acre subdivision within which it is located is mineral land: Provided, That the word "mineral," where it occurs in this act, shall not be held to include iron or coal: And provided further, That the examination and classification of lands hereby authorized shall be made without reference or regard to any previous examination or report or classification thereof.

SEC. 4. That such of the lands herein mentioned as have been surveyed prior to the passage of this act shall be first examined and classified as herein provided, and afterwards, and as speedily as practicable, the lands herein mentioned which have not been surveyed, until all the lands herein mentioned shall have been examined and classified, as herein provided.

SEC. 5. That said commissioners shall, on or before the fifth day of each month, file in the office of the register and receiver of the land office of the land district in which the land examined and classified is situated a full report, in duplicate, in such form as the Secretary of the Interior may prescribe, showing all lands examined by them during the preceding month, and specifying clearly, by legal subdivisions, where the land is surveyed, or otherwise by natural objects or permanent monuments to identify the same, the lands classified by them as mineral lands and those classified as nonmineral; and with said report shall be filed all testimony taken and written communications received by said commissioners relating to the lands embraced in the report. The register and receiver shall file one duplicate of said report in their office, together with all accompanying testimony and papers, and the other duplicate shall be by them forwarded direct to the Secretary of the Interior, and said

commissioners shall furnish to the Secretary of the Interior at any time such further or additional report or information as he may require concerning any matters relating to their duties or the performance of the same. Upon receipt of such report the register of the land office shall, at the expense of the United States, cause to be published in a newspaper of general circulation in the county in which the land is located, and in one newspaper published at the capital city of the State in which the lands may be situated, at least once a week for four consecutive weeks, notice of the classification of lands as shown by said report, and any person, corporation, or company feeling aggrieved by such classification may, at any time within 60 days after the first publication of said notice, file with the register and receiver of the land office a verified protest against the acceptance of said classification, which protest shall set forth in concise language the grounds of objection to the classification as to the particular land in said protest described, whereupon a hearing shall be ordered by, and conducted before, the said register and receiver, under rules and regulations as near as practicable in conformity with the rules and practice of such land office in contests involving the mineral or nonmineral character of land in other cases; and an appeal from the decision of the register and receiver shall be allowed to the Commissioner of the General Land Office and the Secretary of the Interior, under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That at such hearings the United States shall be represented and defended by the United States district attorney or his assistants for the judicial district in which the land is situated, unless the Secretary of the Interior shall detail some proper officer of the Department of the Interior for that purpose. The compensation for such service shall not exceed $10 per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands.

SEC. 6. That as to the lands against the classification whereof no protest shall have been filed as hereinbefore provided, the classification, when approved by the Secretary of the Interior, shall be considered final, except in case of fraud, and all plats and records of the local and general land offices shall be made to conform to such classification. All lands so classified as above without protest, and the classification whereof is disapproved by the Secretary of the Interior, and all lands whereof the classification has been invalidated for fraud, shall be subject to hearing and determination in such manner as the Secretary of the Interior may prescribe. And as to all such lands, and as to the lands against the classification whereof protest may be filed, the final ruling made after the day set for hearing shall determine the proper classification; and all records of the local and general land offices shall be made to conform to the classification as determined by such final ruling, and all costs of such hearings shall be paid by the unsuccessful party, under such rules as the Secretary of the Interior may prescribe; and the Secretary of the Interior is hereby authorized to establish such rules and regulations as may be necessary to carry into effect the true intent and provisions of this act as speedily as practicable.

SEC. 7. That no patent or other evidence of title shall be issued or delivered to said Northern Pacific Railroad Co. for any land in

said land districts until such land shall have been examined and classified as nonmineral, as provided for in this act, and such patent or other evidence of title shall only issue then to such land, if any, in said land districts as said company may be, by law and compliance therewith and by the said classification, entitled to, and any patent, certificate, or record of selection, or other evidence of title or right to possession of any land in said land districts, issued, entered, or delivered to said Northern Pacific Railroad Co. in violation of the provisions of this act shall be void: Provided, That nothing contained in this act shall be taken or construed as recognizing or confirming any grant of land or the right to any land in the said Northern Pacific Railroad Co., or as waiving or in any wise affecting any right on the part of the United States against the said Northern Pacific Railroad Co. to claim a forfeiture of any land grant heretofore made to said company.

SEC. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $20,000, or so much thereof as may be necessary, to be expended to carry into effect the provisions of this act, the same to be paid out upon the order of the Secretary of the Interior; and the Secretary of the Interior is hereby required to embrace in the annual estimates submitted to Congress for appropriations for the Interior Department a sufficient sum to pay the said commissioners for the fiscal year next ensuing, and annually thereafter until the classification of lands required by this act has been fully accomplished.

A. RAILROAD GRANT—MINERAL LANDS CLASSIFIED.

1. PURPOSE OF ACT—CLASSIFICATION OF MINERAL LANDS.
2. CLASSIFICATION OF RAILROAD LANDS WITHIN CERTAIN LIMITS.
3. ACT REFERS TO MINING LAWS IN FORCE AT TIME.
4. TRIBUNAL FOR DETERMINING CHARACTER OF LAND.
5. CLASSIFICATIONS—MATTERS CONSIDERED BY COMMISSIONERS.
6. LANDS CLASSIFIED AS MINERAL.
7. CLASSIFICATION—EFFECT AS TO MINERAL CHARACTER.
8. SELECTIONS OF CLASSIFIED LANDS CANCELED.
9. INDEMNITY SELECTIONS—LIMITS.
10. MINERAL LOCATIONS AND ENTRIES NOT SUSPENDED.
11. PROTEST AGAINST CLASSIFICATION—EFFECT—PRACTICE.
12. CLASSIFICATION—APPROVAL.

1. PURPOSE OF ACT—CLASSIFICATION OF MINERAL LANDS.

This act limits the right of the railroad company under its original grant, and the act of March 2, 1899 (30 Stat. 993), can not be so construed as to remove the limitation imposed by this classification act.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 137.

The purpose of this act was to determine speedily and finally what lands within the limits of the original grant were excepted from its terms by reason of their mineral character.

Luthye v. Northern Pac. R. Co., 29 L. D. 675, p. 677.

This statute was designed to separate the mineral lands from the nonmineral lands for the purpose of aiding a speedy adjustment of the Northern Pacific land grant and the classification, when made by the commissioners, was final as to the railroad company, yet it did not prevent such disposal of the lands as might be proper when a subsequent showing is made as to their character, the effect of a return by the mineral land commissioners being likened to a return of mineral lands made by a Government surveyor.

St. Paul, etc., R. Co., In re, 34 L. D. 211.

This act authorizes the Secretary of the Interior to cause all lands within certain specified districts in Montana and Idaho within the Northern Pacific land grant to be examined and classified by commissioners and the railroad company is afforded due and full opportunity to be heard in opposition to the mineral classification to be made by the commissioners; but any lands classified as mineral under the act are excluded from the operation of the grant to the railroad company, and any patent issued in violation of the provisions of the act is void.

Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 663.

Under section 7 mineral land commissioners were appointed to examine and classify the lands as to their mineral character.

Traphagen v. Kirk, 30 Mont. 562, p. 572.

2. CLASSIFICATION OF RAILROAD LANDS WITHIN CERTAIN LIMITS.

This act limited the classification of lands in Idaho to the lands within the Coeur d'Alene land district and the railroad company in leasing or selecting these lands is required to give notice as to such other lands as are within 6 miles of the mining claim.

Northern Pac. R. Co., In re, 31 L. D. 394, p. 395.

The classification of lands not within the limits of the Northern Pacific land grant is unauthorized and can not be held as affecting the character of the land whether they were returned as mineral at the time of the survey or not.

Northern Pac. R. Co. v. Mann, 33 L. D. 621, p. 622.
See Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 136.

A classification of the even-numbered sections within the specified territory was not authorized under this act, and as the returns made at the time of actual Government survey showed the tracts to be nonmineral, an objection that the company's selection was based upon the mineral classification of lands, is not well taken.

Northern Pac. R. Co. v. Idaho, 37 L. D. 68, p. 69.

3. ACT REFERS TO MINING LAWS IN FORCE AT TIME.

This statute must be understood as referring to the United States mining laws in force at the time of its enactment, including the act of August 4, 1892 (27 Stat. 348), by which lands that are chiefly valuable for building stone were made subject to entry under the placer mineral land sections.

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 508.
Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 428.

4. TRIBUNAL FOR DETERMINING CHARACTER OF LAND.

The fact that this act creates a special tribunal to determine the character of land within the Northern Pacific Railroad grant, with respect to their mineral or nonmineral character, does not directly or by implication suspend the action of the Land Department in this respect; nor does it suspend mineral locations or entries.

Sweeney v. Northern Pac. R. Co., 21 L. D. 65.
See Sweeney v. Northern Pac. R. Co., 20 L. D. 394.

The Secretary of the Interior construed this act as intended to facilitate the adjustment of the grant of land to the Northern Pacific Railroad Co. by enabling him to ascertain without delay what lands within the limits of the grant in the States of Montana and Idaho were mineral in character and excepted from the operation of the grant, and the Secretary determined that the classification of land as mineral did not prevent the Land Department from making such disposition of the land as would be proper upon a subsequent showing that the land was not in fact mineral.

Lynch v. United States, 138 Fed. 535, p. 543.
See Instructions, In re, 25 L. D. 446; 26 L. D. 423, p. 424.

This act approves the mode of determining what is mineral land and authorizes commissioners to be appointed to determine the mineral character of lands from the adjacent lands and their mineral character and geological formation, and the reasonable probability of such lands containing valuable mineral deposits, and these may be taken as criterions for determining as to the lands upon which license is given to cut trees or timber under other acts of Congress.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.

5. CLASSIFICATIONS—MATTERS CONSIDERED BY COMMISSIONERS.

The question to be determined under this section is whether by observing the tests herein prescribed the evidence shows that it is reasonably probable that the land in controversy contains valuable mineral deposits, then it should be so classified and the language here used is in harmony with section 2319 of the Revised Statutes.

Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 447.

Where the evidence shows, taking into account the mineral discovered or developed on or adjacent to the land involved and the geological formation of the land and lands adjacent thereto, that there is a reasonable probability that the land contains valuable mineral deposits, then such lands must be held to be mineral and classified accordingly under this section.

Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 447.

The commissioners are by this section directed to take into consideration the mineral discovered or developed on, or adjacent to the land, as well as the geological formation of all lands to be examined and classified, and they are not to give them or any of them unusual conclusive effects.

Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 448.

The question in determining the classification is whether the land is shown to contain mineral in sufficient quantity and of such value as to justify a person of ordinary prudence in the further expenditure of his labor and means in an effort to extract such mineral, with a reasonable prospect of success in developing a paying mine.

Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 449.

6. LANDS CLASSIFIED AS MINERAL.

By this statute all lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration and purchase under the United States mining laws; but the word "mineral" as used in this act does not include coal and iron, and it is clear that Congress used the term "mineral lands" as the equivalent of the terms "lands valuable for minerals" and "all valuable mineral deposits" as used in the mining statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 246.
Overruling Tucker v. Florida R., etc., Co., 19 L. D. 414.
See Florida Central & Peninsular R. Co., In re 26 L. D. 600, p. 601.

Under this section land shall be classified as mineral which by reason of valuable mineral deposits make them open to exploitation, occupation, and purchase under the provisions of the United States mining laws.

Morrill v. Northern Pac. R. Co., 30 L. D. 475, p. 477.

Lands containing valuable deposits of limestone which are more valuable for such limestone than for agricultural purposes are properly classified as mineral under this act.

Morrill v. Northern Pac. R. Co., 30 L. D. 475, p. 439.

The classification of lands containing valuable deposits of fire clay by the commissioners under this statute as nonmineral is not justified where it appears that such lands are wholly unfit for agricultural purposes.

Alldritt v. Northern Pac. R. Co., 25 L. D. 349, p. 351.

The fact that land applied for as coal land lies in what is known as the Colorado coal field, including about 2,500 square miles, but in which there is probably not more than 100 square miles valuable for coal, and the further fact that there are valuable coal deposits in the vicinity of such lands does not prove such lands to be coal lands within the meaning of this act.

Warren v. Colorado, 14 L. D. 681, p. 684.

The commissioners appointed under this act have no authority to classify land as nonmineral for which certificates of placer location have been duly filed in the office of the clerk and recorder of the proper county, and where it is shown that the land is more valuable for mining than for agricultural purposes.

Baudette v. Northern Pac. R. Co., 29 L. D. 248, p. 249.

7. CLASSIFICATION—EFFECT AS TO MINERAL CHARACTER.

The classification contemplated in this act was to be with special reference to the mineral or nonmineral character of such land and was for the purpose of adjusting the claim of the Northern Pacific Railroad Co. land grant, and in the absence of a protest and when approved by the Secretary of the Interior such classification became final and the tract classified as mineral was excepted from the grant to such railroad company.

Lynch v. United States, 138 Fed. 535, p. 541.

After the selection and classification by the commissioners under this act neither the railroad company nor third persons can question the mineral character of the lands so classified.

Lamb v. Northern Pac. R. Co., 29 L. D. 102, p. 105.
Luthye v. Northern Pac. R. Co., 29 L. D. 675, p. 677.

The classification made under this act may be considered as a matter of evidence the same as any other material fact bearing upon the character of the land, and the return of nonmineral public lands as required by the act of March 2, 1899 (30 Stat. 993), was not intended to be accepted as conclusive.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 139.

8. SELECTIONS OF CLASSIFIED LANDS CANCELED.

A selection or filing by the railroad company either before or after the act would be immaterial, as all selections and filings upon all lands classified by the commission under the act were canceled.

Luthye v. Northern Pac. R. Co., 29 L. D. 675, p. 677.

The Land Department has the right to take such further steps as may seem needful to protect the interests of the United States in lands classified under this act.

Northern Pac. R. Co., In re, 33 L. D. 601, p. 604.
See Northern Pac. R. Co., In re, 32 L. D. 611.

9. INDEMNITY SELECTIONS—LIMITS.

The indemnity selection for lost mineral lands may be made within 50 miles of the line of the railroad, as provided in section 3 of the act of July 2, 1864 (13 Stat. 365).

Northern Pac. Land Grant, In re, 41 L. D. 571, p. 574.
Northern Pac. Land Grant, In re, 41 L. D. 576.
See Northern Pac. R. Co., 8 L. D. 13, p. 14.

10. MINERAL LOCATIONS AND ENTRIES NOT SUSPENDED.

This act does not suspend mineral locations made prior to its passage, nor pending the approval by the Secretary of the Interior of the classification made by the commissioners does it apply to cases where, prior to the approval of the classification, claimants under the mining laws have prima facie established the mineral character of the land, and their claims have passed to entry.

Northern Pac. R. Co. v. Ledoux, 32 L. D. 24, p. 25.
See Sweeney v. Northern Pac. R. Co., 21 L. D. 65.

11. PROTEST AGAINST CLASSIFICATION—EFFECT—PRACTICE.

Where land has been classified as mineral under this act and protests are filed alleging it to be nonmineral, service of notice by publication at the expense of the protestant must be had.

Northern Pac. R. Co., In re, 32 L. D. 611, p. 614.

On a protest against a mineral classification by this act, notice must be posted in a newspaper nearest the land, and an abuse of the discretion vested in the register in this respect will entitle a protestant to a new hearing.

Northern Pac. R. Co., In re, 32 L. D. 611, p. 614.
See Northern Pac. R. Co., In re, 33 L. D. 74.

Where a protest by an agricultural claimant against the existing mining location is shown to be false and the character of the land clearly misrepresented, the land may be taken as prima facie mineral and should be so classified by the commission, unless upon personal inspection or by satisfactory evidence the presumption is overcome.

Lamb v. Northern Pac. R. Co., 29 L. D. 102, p. 104.

A protest against an entry under this grant, not filed until after the prescribed time, must make such a showing of fraud in the classification as will condemn and avoid it if sustained by proof before an order will be made for a hearing.

Lamb v. Northern Pac. R. Co., 29 L. D. 102, p. 104.

Where a classification of lands under this act has been approved, a hearing will not be ordered by the Land Department on a mere statement in a protest that the lands are mineral in character where these has been no demonstration of their substantial mineral value or exploitation of any consequence from which actual or constructive fraud in the classification could be inferred, and to order a hearing under such circumstances would be to deny to the classification a weight contemplated by statute which provides that the finality of such classification can be impeached on the ground of fraud only.

Beveridge v. Northern Pac. R. Co., 36 L. D. 40.

12. CLASSIFICATION—APPROVAL.

The classification under this act does not take effect and has no binding force and can not in any sense be considered as final until approved by the Secretary of the Interior.

Northern Pac. R. Co. v. Ledoux, 32 L. D. 24, p. 25.

The Secretary of the Interior, by virtue of the power vested in him, may disapprove the classification by the commissioners appointed under the authority of this act, even where no protest is filed, if it appears that the classification does not correctly represent the character of the land.

Northern Pac. R. Co. v. Ledoux, 32 L. D. 24, p. 25.
See Wisconsin Central R. Co. v. Price Co., 133 U. S. 496.
Williams v. United States, 138 U. S. 514, p. 524.
Lamb v. Northern Pac. R. Co., 29 L. D. 102.

In determining whether a classification against which no protest has been filed shall be approved or not the Secretary will consider the reasons assigned for the classification and apply the same rules by which the commissioners are guided, and if it appears in any case that there is a mining location on any portion of the lands classified, this may be accepted by the Secretary as prima facie evidence that the 40-acre tract upon which it is located is mineral, and there is no good reason why it should not be given the same weight where there is a protest against the classification.

Holter v. Northern Pac. R. Co., 30 L. D. 442, p. 449.

The odd-numbered sections in the Cœur d'Alene land district of Idaho were classified as mineral under this act, and the classification was approved by the department prior to a selection made by the railroad company, notwithstanding the returns made at the time of actual Government survey classified the same tracts as nonmineral.

Idaho v. Northern Pac. R. Co., 37 L. D. 135.

A report by the commissioners under this act that certain lands were personally examined by the members of the board and no traces of mineral formation were found therein is sufficient evidence upon which the Secretary may approve the classification.

Lamb v. Northern Pac. R. Co., 29 L. D. 102, p. 105.

30 STAT. 11, p. 37, 2 SUPP. R. S. 621, JUNE 4, 1897.

EXPENSES FOR CLASSIFICATION OF MINERAL LANDS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes.

Be it enacted, etc., * * *

For compensation of the 12 commissioners appointed under the act of February 26, 1895 (28 Stat. 683), to examine and classify certain lands within the land-grant and indemnity land-grant limits of the Northern Pacific Railroad Co., in the States of Montana and Idaho, with special reference to the mineral or nonmineral character of such lands, $30,000: Provided, That said commissioners shall be paid at the rate of $10 a day each while actually engaged in the performance of their duties, which amount shall include their transportation and subsistence expenses, and that the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of $2,500. * * *

30 STAT. 1074, p. 1096, MARCH 3, 1899.

COMPLETION OF CLASSIFICATION—TIME EXTENDED—EXPENSES.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, etc.

Be it enacted, etc., That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June 30, 1900, namely: * * * The time for the completion of the classification of lands within the land-grant and indemnity land-grant limits of the Northern Pacific Railroad Co., authorized by the act of Congress entitled "An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," approved February 26, 1895 (28 Stat. 683), and the acts supplementary thereto, is hereby extended to and including the 31st day of October, 1899, on or before which date the work of the commissioners shall be completed and the said commissioners be discharged.

Mineral lands in Montana and Idaho: For compensation until and including October 31, 1899, of the 12 commissioners appointed under the act of February 26, 1895 (28 Stat. 683), to examine and classify certain lands within the land-grant and indemnity-land-grant limits of the Northern Pacific Railroad Co., in the States of Montana and Idaho, with special reference to the mineral or nonmineral character of such lands, $10,000: Provided, That said commissioners shall be paid at the rate of $10 a day each while actually engaged in the performance of their duties, which amount shall include their transportation and subsistence expenses, and that the total amount of compensation to be paid to each commissioner shall in no case exceed for the period named the rate of $2,500 per annum.

31 STAT. 568, p. 615, 2 SUPP. R. S. 1433, p. 1435, JUNE 6, 1900.

COMPLETION OF CLASSIFICATION—REPORTS OF COMMISSIONERS.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1901, etc.

Be it enacted, etc. * * *

Mineral lands in Montana and Idaho: To complete the examination and classification of certain lands within the land-grant and indemnity-land-grant limits of the Northern Pacific Railroad Co. in the Helena and Missoula land districts in the State of Montana, and in the Coeur d'Alene land district in the State of Idaho, with special reference to the mineral or nonmineral character of such lands, as authorized by the act of February 26, 1895 (28 Stat. 683), namely: For the compensation of the commissioners, not exceeding 15 in number, of whom not more than 10 shall be of one political party, to be appointed by the President, by and with the advice and consent of the Senate, such compensation not to exceed $6 per day for each commissioner while actually engaged in the performance of their duties, which amount shall include their transportation and subsistence expenses; also for the publication of monthly reports and for the payment of such clerical help as in the opinion of the Commissioner of the General Land Office may be necessary for the expeditious

and economical prosecution of the work, $25,000: Provided, That each commissioner shall act separately, and only one commissioner shall examine and report on any tract of land, and his examination and report shall have the same force and effect as if made by three commissioners, and under this appropriation the entire work of examination and classification, including the publication of notices and all other expenses therewith connected, shall be completed; and the law of February 26, 1895, entitled "An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," shall be deemed and held to be applicable to the commissioners herein provided for.

* * * * * * *

A. PURPOSE OF ACT.

1. COMPLETION OF CLASSIFICATION.
2. SELECTION OF NONMINERAL LANDS—APPLICATION.
3. VACANT LANDS—MEANING.
4. JURISDICTION OF LAND DEPARTMENT—TERMINATION.

1. COMPLETION OF CLASSIFICATION.

This act was intended to have completed the examination and classification of certain lands within the land-grant and indemnity-land-grant limits of this railroad company in the district named with special reference to the mineral or nonmineral character of such lands, as authorized by the act of February 26, 1895 (28 Stat. 683).

Northern Pac. R. Co., In re, 31 L. D. 394, p. 396.

2. SELECTION OF NONMINERAL LANDS—APPLICATION.

The selections of nonmineral public land authorized by this act apply only to selections made under the provisions of the act of June 4, 1897 (30 Stat. 36), and not to those made under the act of March 2, 1899 (30 Stat. 993).

Comstock v. Northern Pac. R. Co., 34 L. D. 88, p. 89.
See Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 139.
Santa Fe, etc., R. Co. v. Northern Pac. R. Co., 37 L. D. 669.

3. VACANT LANDS—MEANING.

This act limits the selection authorized by the act of June 4, 1897 (30 Stat. 11), to vacant, surveyed, nonmineral public lands which are subject to homestead entry, and the expression "vacant land," includes land which not only is not occupied, but also land which is not appropriated, not reserved, and land for which no claim has been presented under any laws providing for the disposition of the public domain.

Santa Fe Pac. R. Co. v. Northern Pac. R. Co., 37 L. D. 669, p. 671.
See Idaho v. Northern Pac. R. Co., 37 L. D. 135.

4. JURISDICTION OF LAND DEPARTMENT—TERMINATION.

The point of time when a sale is effectuated is usually determined by some action of the authorized officers in issuing a certificate approving a list or a survey or in some way definitely declaring recognition of the claim as a preference right, and until that point is reached jurisdiction remains in the Land Department.

Walker, In re, 36 L. D. 495, p. 496.

RESERVATIONS.

16 STAT. 149, JUNE 11, 1870.

HOT SPRINGS RESERVATION—ARKANSAS.

AN ACT In relation to the Hot Springs Reservation in Arkansas.

Be it enacted, etc., That any person claiming title, either legal or equitable, to the whole or any part of the four sections of land constituting what is known as the Hot Springs Reservation in Hot Springs County, in the State of Arkansas, may institute against the United States in the Court of Claims, and prosecute to final decision, any suit that may be necessary to settle the same: Provided, That no such suits shall be brought at any time after the expiration of 90 days from the passage of this act, and all claims to any part of said reservation upon which suit shall not be brought under the provisions of this act within that time shall be forever barred.

19 STAT. 377, CHAP. 106, MARCH 3, 1877.

HOT SPRINGS RESERVATION—ARKANSAS—AMENDMENT.

AN ACT In relation to the Hot Springs Reservation in the State of Arkansas.

Be it enacted, etc., That so much of section 5 of an act of June 11, 1870 (16 Stat. 149), in relation to the Hot Springs Reservation of Arkansas, as provides for the appointment of a receiver by the court, be, and the same is hereby, repealed: Provided, That nothing in this section shall be construed to affect the right of the United States to collect and receive rents already due. * * *

SEC. 2. That it shall be the duty of the President of the United States, upon the passage of this act, to appoint three discreet, competent, and disinterested persons, who shall constitute a board of commissioners, any two of whom shall constitute a quorum, who are hereby authorized to perform and discharge the duties specified by this act. * * *

SEC. 4. That before making any subdivision of said lands, as described in the preceding section, it shall be the duty of said board of commissioners, under the direction and subject to the approval of the Secretary of the Interior, to designate a tract of land included in one boundary, sufficient in extent to include, and which shall include, all the hot or warm springs situate on the lands aforesaid, to embrace, as near as may be, what is known as Hot Springs Mountain, and the same is hereby reserved from sale, and shall remain under the charge of a superintendent, to be appointed by the Secretary of the Interior: Provided, however, That nothing in this section shall prevent the Secretary of the Interior from fixing a special tax on water taken from said springs, sufficient to pay for the protection and necessary improvement of the same.

A. SALINES AND SALT SPRINGS.

1. HOT SPRINGS RESERVATION—RIGHTS OF LESSEES AND CLAIMANTS.

See Salines and salt springs, p. 1194.
State and public grants, p. 1239.

This act was passed for the benefit of occupants and claimants who had made improvements in order that they should not entirely forfeit their claims and improvements, but gave lessees no rights as against their lessors.

Rector v. Gibbon, 111 U. S. 276, p. 283.

This act can not be construed so as to give laborers or lessees occupying mining claims and working for the first locator any preemption rights over him to such claim.

Rector v. Gibbon, 111 U. S. 276, p. 287.

The provisions of section 5 of this act as to the power of the commissioners to determine the right of each occupant relates to the legal title, which under the act is to pass from the United States; but does not preclude a court of equity from inquiring whether the legal title from the United States is not subject to a trust in favor of another.

Rector v. Gibbon, 111 U. S. 276, p. 290.

The powers conferred by this statute upon the commissioners are analogous to those conferred upon the receiver and register of land offices in case of conflicting claims, and it was their duty to certify all the facts to the Secretary of the Interior and to issue a certificate to each claimant, setting forth the amount of land he was entitled to purchase.

Rector v. Gibbon, 111 U. S. 276, p. 280.

Under this statute occupants and claimants must file their claims before the commissioners within six months after their first session, and no claims can be considered which had accrued after the 24th day of April, 1876.

Rector v. Gibbon, 111 U. S. 276, p. 280.

23 STAT. 103, 1 SUPP. U. S. 453, JULY 5, 1884.

ABANDONED RESERVATIONS—DISPOSAL.

AN ACT To provide for the disposal of abandoned and useless military reservations.

Be it enacted, etc., That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof.

* * * * * * *

SEC. 5. Whenever any lands containing valuable mineral deposits shall be vacated by the reduction or abandonment of any military reservation under the provisions of this act, the same shall be disposed of exclusively under the mineral laws of the United States.

A. MINING CLAIMS IN ABANDONED RESERVATIONS—DISPOSAL.
B. STONE LANDS LOCATABLE AS PLACERS.

A. MINING CLAIMS IN ABANDONED RESERVATIONS—DISPOSAL.

By section 5 of this act the disposition of mining claims within the abandoned military reservation was placed under the control of the Secretary of the Interior.

Randolph, In re, 23 L. D. 516, p. 517.

B. STONE LANDS LOCATABLE AS PLACERS.

While it can not be said that building stone comes within the letter of this statute, yet construing this section with the act of 1892 (27 Stat. 348) brings it within the spirit of the latter act and makes land containing building stone subject to location as a placer mining claim.

Randolph, In re, 23 L. D. 516, p. 518.

The former decision under this act, refusing the applicant the right to locate lands chiefly valuable for building stone, is set aside, and under the construction of this statute, in connection with the act of August 4, 1892 (27 Stat. 348), the location is permitted.

Randolph, In re, 23 L. D. 516, p. 518.
Vacating Randolph, In re, 23 L. D. 329.

28 STAT. 664, FEBRUARY 15, 1895.

ABANDONED RESERVATIONS—DISPOSAL—AMENDMENT.

AN ACT To amend and extend the provisions of an act entitled "An act to provide for the opening of certain abandoned military reservations, etc.," approved August 23, 1894.

Be it enacted, etc., That the provisions of the act approved August 23, 1894, entitled "An act to provide for the opening of certain abandoned military reservations, and for other purposes," are hereby extended to all abandoned military reservations which were placed under the control of the Secretary of the Interior under any law in force prior to the act of July 5, 1884 (23 Stat. 103).

SEC. 2. That the preference right of entry given to actual settlers by the terms of the act to which this is an amendment shall, so far as the lands to which the provisions of said act are extended, take effect and continue for six months from the date of this amendatory act.

26 STAT. 227, JULY 10, 1890.

MILITARY RESERVATIONS—DISPOSAL—WYOMING.

AN ACT To provide for the disposal of certain abandoned military reservations in Wyoming Territory.

Be it enacted, etc., That all public lands now remaining undisposed of within the abandoned military reservations in the Territory of Wyoming, known as Forts Fetterman (post), Laramie, Sanders, and Steele (post) Military Reservations, and that portion of the Fort Bridger Reservation heretofore abandoned for military purposes, and which are not otherwise occupied or used for any public purpose, are hereby made subject to disposal under the homestead law only: Provided, That actual occupants thereon upon the 1st day of January, 1890, if otherwise qualified, shall have the preference right to make one entry, not exceeding one quarter section, under either of the existing land laws, which shall include their respective improvements: Provided further, That any of such lands as are occupied for town-site purposes, and any of the lands that may be shown to be valuable for coal or minerals; such lands so occupied for town-site purposes, or valuable for coal or minerals, shall be disposed of as now provided

for lands subject to entry and sale under the town-site, coal, or mineral land laws, respectively: Provided further, That this act shall not apply to any subdivision of land, which subdivision may include adjoining lands to the amount of 160 acres, on which any buildings or improvements of the United States are situated until the Secretary of the Interior shall so direct: Provided further, That the passage of this act shall not be construed to amend or repeal the act approved May 28, 1888, entitled "An act granting certain lands in the Territory of Wyoming for public purposes."

26 STAT. 478, SEPTEMBER 25, 1890.

PARK LANDS—CALIFORNIA.

AN ACT To set apart a certain tract of land in the State of California as a public park.

Be it enacted, etc., * * *

SEC. 2. That said park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding 10 years of small parcels of ground not exceeding 5 acres, at such places in said park as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases and other revenues that may be derived from any source connected with said park to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish and game found within said park, and against their capture or destruction, for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and, generally, shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act.

26 STAT. 650, OCTOBER 1, 1890.

FOREST RESERVATIONS.

AN ACT To set apart certain tracts of land in the State of California as forest reservations.

Be it enacted, etc., That the tracts of land in the State of California known and described as follows [here follows description] are hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserved forest lands; and all persons who shall locate or settle upon, or occupy the same or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom: Provided, however, That nothing in this act shall be construed as in any wise affecting

the grant of lands made to the State of California by virtue of the act entitled "An act authorizing a grant to the State of California of the Yosemite Valley, and of the lands embracing the Mariposa Big-Tree Grove," approved June 18, 1864; or as affecting any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act.

SEC. 2. That said reservation shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding 10 years of small parcels of ground not exceeding 5 acres, at such places in said reservation as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases and other revenues that may be derived from any source connected with said reservation to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish, and game found within said reservation, and against their capture or destruction, for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and, generally, shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act.

* * * * * * *

A. MINER'S RIGHT TO CUT TIMBER ON RESERVATION.

A miner on a mining claim within this reservation is restricted from cutting timber on any lands therein outside of his own claim, and he has no right to construct any road or ditch unless absolutely necessary to the development of his claim and under the authority of the Secretary of the Interior.

Yosemite National Park, In re, 25 L. D. 48, p. 51.

26 STAT. 747, FEBRUARY 13, 1891.

ABANDONED MILITARY RESERVATION—FORT ELLIS—DISPOSAL.

AN ACT To provide for the disposal of the abandoned Fort Ellis military reservation in Montana under the homestead law, and for other purposes.

Be it enacted, etc., That the Secretary of the Interior be, and is hereby, authorized and directed to cause the lands embraced within the abandoned Fort Ellis Military Reservation in Montana to be regularly surveyed by an extension of the public surveys over the unsurveyed portions thereof.

SEC. 2. That there is hereby granted to the State of Montana, one section of said reservation, to be selected according to legal subdivisions so as to embrace the buildings and improvements thereon to be used by said State as a permanent militia camp ground, or for

other public purpose in the discretion of the State legislature: Provided, That whenever the State shall cease to use said lands for public purposes the same shall revert to the United States.

SEC. 3. That the remainder of said reservation, or any portion thereof may be selected by the State of Montana at any time within one year after the approval of the survey thereof, in tracts of not less than one section, in square form and according to legal subdivisions as a part of the lands granted to said State under the provision of "An act to provide for the admission of the State of Montana into the Union," approved February 22, 1889. And the Secretary of the Interior shall cause patents for the lands so selected to be issued to the said State: Provided, That no existing lawful rights to any of said lands initiated under any of the laws of the United States shall be invalidated by this act: Provided, That if any portion of said reservation shall remain unselected by said State for a period of one year after the approval of the survey, that portion remaining unselected shall be subject to entry under the general land and mining laws of the United States: Provided further, That if within said period of one year the governor of the said State shall officially notify the Secretary of the Interior that the State has completed its selections, then the Secretary shall at once proclaim the remaining lands open to entry as aforesaid: And provided further, That nothing in this act shall be construed to waive or release in any way, any right of the United States to have the lands granted to the Northern Pacific Railroad Co. forfeited, for any failure, past or future, to comply with the conditions of the grant.

26 STAT. 1095, p. 1103, MARCH 3, 1891.

FOREST RESERVATIONS—PRESIDENT'S POWER TO SET ASIDE PUBLIC LANDS.

AN ACT To repeal timber-culture laws, and for other purposes.

Be it enacted, etc., * * *

SEC. 24. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

30 STAT. 11, pp. 35, 36, 2 SUPP. R. S. 631, p. 634, JUNE 4, 1897.

FOREST RESERVATIONS—PROVISIONS GOVERNING ESTABLISHMENT.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes.

Be it enacted, etc. * * *

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March 3, 1891 (26 Stat. 1095, p. 1103, sec. 24), the orders for which

shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be, as far as practicable, controlled and administered in accordance with the following provisions:

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose and intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

* * * * * * *

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: Provided, That such persons comply with the rules and regulations covering such forest reservations.

* * * * * * *

All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder. (See section 2339 R. S.)

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after 60 days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

NOTE.—The section making compensation for classification of railroad lands follows 28 Stat. 683, with 13 Stat. 365, Railroad grants, pp. 1112, 1148.

A. FOREST RESERVATION ACT.

1. PURPOSE AND EFFECT OF ACT.
2. MINERAL LANDS RESTORED TO PUBLIC DOMAIN.
3. RIGHT TO PROSPECT FOR MINERALS.
4. COAL LANDS IN FOREST RESERVATIONS—ENTRY.
5. MINING CLAIMS IN RESERVATIONS PROTECTED.
6. IMPROPER USE OF MINING CLAIM NOT PERMITTED.
7. SELECTION OF LIEU LANDS.
   a. AUTHORITY OF LAND DEPARTMENT.
   b. AUTHORITY OF LOCAL OFFICERS.
   c. EFFECT AND VALIDITY OF REGULATIONS.
   d. PRACTICE.
   e LANDS SUBJECT TO SELECTION—CONDITIONS.
   f. "VACANT AND UNOCCUPIED"—MEANING.
   g. CHARACTER DETERMINED AT DATE OF SELECTION.
   h. VESTED RIGHTS AND TITLES PROTECTED.
   i. MINERAL LANDS NOT SELECTABLE.
   j. LANDS LOCATED NEAR MINERAL LANDS—EFFECT.
   k. EFFECT OF PATENT FOR LIEU SELECTIONS.
   l. MINERAL SURVEYOR CAN NOT MAKE SELECTION.

1. PURPOSE AND EFFECT OF ACT.

Congress did not declare in this act the purposes for which all such reservations are established, and it is not the purpose of forest reserve legislation to authorize the inclusion in forest reserves of land more valuable for mineral than for forest purposes, and the act expressly states that nothing therein shall prohibit any person from entering upon such reservations, under certain regulations, for proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof, and mineral lands in such reservations are subject to entry under the mining laws.

Crowder, In re, 30 L. D. 92, p. 94.

The forestry reservation attaches to public lands not valuable for mineral deposits within the national forests, and the Government, through the proper officers, is entitled alone to the possession and control thereof, and the timber growing thereon, and mining claims not asserted in good faith and not based upon sufficient discovery of mineral infringe upon this right of possession, and therefore a determinaton as to the character of the land and the validity of such location becomes essential, and this duty devolves upon the Land Department.

Yard, In re, 38 L. D. 59, p. 66.

The only settlement laws in force contemporaneously with this statute are the homestead and town-site laws.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

This act is void in so far as it declares to be a crime any violation of the rules and regulations thereafter made by the Secretary of the Interior for the protection of forest reservations, as it is a delegation of legislative power to an administrative officer.

United States v. Blasingame, 116 Fed. 654.
United States v. Maid, 116 Fed. 650, p. 653.

2. MINERAL LANDS RESTORED TO PUBLIC DOMAIN.

When any land in a forest reservation shall be found better adapted for mining purposes than for forest usage the Secretary of the Interior may, upon the prescribed notice, restore such mineral land to the public domain and make them subject to entry under existing mining laws.

United States v. Lavenson, 206 Fed. 755, p. 764.

Lands within a forest reservation that are found to be better adapted for mining than for forest usage continue to be subject to location and entry under the mining laws, but a patent procured for land in a forest reservation on the representation that such land was valuable for mineral deposits and the patentee desired it for that purpose, may be canceled at a suit on behalf of the United States, where it is made to appear that the land was not in fact valuable for its mineral deposits, and it was not the purpose of the patentee to use it for its mineral deposits but for other and different purposes, and where there was no examination by personal investigation.

United States v. Lavenson, 206 Fed. 755, p. 764.

Under this statute mineral lands in forest reservations continue to be subject to location and entry under the mining laws.

Yard, In re, 38 L. D. 59, p. 65.

Under this statute discovery alone is not sufficient on a mining claim located within a forest reserve, and nothing short of a probably commercially valuable mine will satisfy this statute.

United States v. Lavenson, 206 Fed. 755, p. 763.

3. RIGHT TO PROSPECT FOR MINERALS.

The right of a person to prospect and explore upon the public domain upon equal terms with all other prospectors is not abridged by any finding respecting the validity of a mining location, but such persons have no right to interpose barriers or to assert within the national forests or elsewhere merely colorable mining claims in order to secure or protect their rights as mere prospectors.

Yard, In re, 38 L. D. 59, p. 69.

4. COAL LANDS IN FOREST RESERVATIONS—ENTRY.

By the use of the words "subject to entry under the existing mining laws" Congress did not intend to limit to prospecting, locating, developing, and entry of the mineral lands for forest reservations, to any particular class or kind of mineral lands, and especially to include all other mineral lands except coal lands.

Crowder, In re, 30 L. D. 92, p. 94.

The words used in this act are not used in any narrow or restricted sense nor in any other than as relating to mineral lands of every kind and class and as relating to coal lands as well as all other mineral lands.

Crowder, In re, 30 L. D. 92, p. 96.
See Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 239.
Coleman v. McKenzie, 28 L. D. 348, p. 352.

Coal is mineral in both the common and scientific understanding of the words, and mineral lands embrace and include lands valuable for their deposits of coal.

Crowder, In re, 30 L. D. 92, p. 94.

Coal lands are mineral lands subject to entry under the mining laws of the United States within the meaning of this act.

Crowder, In re, 30 L. D. 92, p. 94.

5. MINING CLAIMS IN RESERVATIONS PROTECTED.

The location of a mining claim within a forest reservation does not operate to withdraw the land embraced therein from the jurisdiction of the Forestry Service, and while it does not take from him the right to take and utilize the entire claim, including the surface, for all purposes and to the same extent to which he could have possessed and used it if no forest reservation existed, it confers no right to use the surface of such claim for other than mining purposes.

United States v. Rizzinelli, 182 Fed. 675, p. 684.

A location of a mining claim does not ipso facto withdraw the land embraced therein from the jurisdiction of the Secretary of Agriculture.

United States v. Rizzinelli, 182 Fed. 675, p. 680.

The locator of a mining claim under this statute has the right of exclusive possession against the Government as well as against third persons.

United States v. Rizzinelli, 182 Fed. 675, p. 680.

This act does not limit or qualify the rights of a locator of a mineral claim or confer any authority upon the Secretary of Agriculture, by regulation or otherwise, to limit or qualify such rights.

United States v. Rizzinelli, 182 Fed. 675, p. 680.

Subject to the locator's legitimate uses for mining purposes, the Government continues to be the owner of the land, is interested in conserving its value and preventing injury and waste, and it is reasonable to assume that Congress advisedly concluded to leave the Government's interest therein subject to the jurisdiction therein and under the protection of the department that is responsible for the care and protection of the surrounding lands and forests.

United States v. Rizzinelli, 182 Fed. 675, p. 684.

A relinquishment of land under this act is not effective as against a mineral claimant who was not made a party to the proceeding or served with notice, and if the land was in fact mineral that character would not be changed by an error of the Land Department in an ex parte proceeding, due to lack of information that the land was claimed and was being sold and surveyed as mineral land by parties not brought before the Land Office and not heard, and the rights of such mineral claimants could not be affected by such proceedings.

Goetjen, In re, 32 L. D. 209, p. 210.

6. IMPROPER USE OF MINING CLAIM NOT PERMITTED.

In a national forest the Government occupies a position as to a mining claimant similar to that of an individual claimant upon the open public domain under any of the nonmineral land laws and is not without its remedy.

Yard, In re, 38 L. D. 59, p. 67.

Merely colorable mining locations upon this forest reservation will afford no protection for an unwarranted intrusion and unlawful invasion by the construction of telephone lines, wagon roads, ditches, dams, and reservoirs upon the territory of the national forest, and the investigation of such matters is within the jurisdiction of the Land Department.

Yard, In re, 38 L. D. 59, p. 67.
Distinguishing Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 276.

Under this statute the locator of a mining claim within the forest reservation has the exclusive right of possession of such claim for mining purposes only, and it is a

violation of the provisions of this act for such a locator to erect on his mining claim a saloon or other buildings or structures without permit that are in no way connected with the mining or development of the claim as such.

United States v. Rizzinelli, 182 Fed. 675, p. 684.

The fact that the locator of a mining claim in a forest reservation may be indicted for maintaining a saloon upon such claim does not imply that his rights as a locator are less because the lands are in a forest reservation than they would be if the claim were upon the open public domain, as in neither case does the location of a mining claim confer the right to maintain a saloon thereon, and in both cases the Government has a remedy by way of civil action, but under this act the Government has the additional remedy of a criminal prosecution.

United States v. Rizzinelli, 182 Fed. 675, p. 684.

7. SELECTION OF LIEU LANDS.

a. AUTHORITY OF LAND DEPARTMENT.

The character of lands in forest reservations located and claimed under the mining laws may be determined by the Land Department in the absence of entry or application for mineral patent where such determination is necessary to the due and proper adminstration of the laws providing for the protection and maintenance of such reservation, and the Land Department has jurisdiction over any such lands for the purpose of determining whether they are subject to occupation and purchase under the mining laws.

Yard, In re, 38 L. D. 59, p. 62.

The administration of grants upon the public domain is committed to the Land Department.

Yard, In re, 38 L. D. 59, p. 66.

Matters of fact, such as the mineral character of the land, its condition as to occupancy, when determined by officers of the Land Department and the applicant is allowed to make his selection or enter and pay therefor, vests in him a right which can not be affected by subsequent discoveries in respect to its character or condition.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 44.
See Smelting Co. v. Kemp, 104 U. S. 636, p. 640.
Steel v. Smelting Co., 106 U. S. 447.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 314.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568.

The Land Office, or the Secretary of the Interior on appeal, is authorized to determine for the Land Department the question as to whether or not certain lands located as lieu lands are open to selection and as to whether or not such lands are mineral or nonmineral; and the determination of the land officers or of the Secretary of the Interior on these questions can not be controlled by the courts.

Riverside Oil Co. v. Hitchcock, 21 App. Cases, D. C. 252, p. 264. (Affirmed 190 U. S. 316.)
See Steel v. Smelting Co., 106 U. S. 447, p. 450.
Barden v. Northern Pac. R. Co., 154 U. S. 288.
United States v. Hitchcock, 190 U. S. 316.

The Secretary of the Interior may permit under this act the use of timber and stone found upon forest reservations free of charge by bona fide settlers, residents, and prospectors for mineral for fire wood, fencing, building, mining, prospecting, and other domestic purposes as may be needed by such persons for such purposes.

White, In re, 34 L. D. 78, p. 81.
See City and County of Beaver, In re, 34 L. D. 112, p. 113.

D. AUTHORITY OF LOCAL OFFICERS.

There is nothing in this statute which gives a local land office the right to decide that the selector has complied with the provisions of the act, and unless these officers had that power they did not acquire it by assuming to exercise it, but they only receive, accept, and file the deed, abstract of title, the nonmineral affidavit, and the selection, enter the same upon the office records of the Land Office and certify that it was free from conflict and that there was no adverse claim thereto, but this is by no means deciding that the selector had complied with the provisions of the statute or that he had done all that was necessary in order to acquire a complete equitable title.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 312.

No officer of the Government is authorized to accept or approve an application under this act where he is advised before consummation of the transaction that the land applied for is mineral in character.

Walker, In re, 36 L. D. 495, p. 498.

A certificate of the local land officers that lands selected as lieu land were free from conflict, and no adverse filing or entry or claim had been made, is simply a certification as to what appeared on the books of the local land office, and it does not certify that the lands so selected were in fact vacant and unoccupied nor does it certify that the land contained no minerals, but it simply certifies that the selector had done certain things and that the land selected was vacant and open to settlement so far as it appeared on the books of the local land office, and such action of the local officer did not and could not amount to a decision upon the application of the selector so as to vest him with the equitable title to the land he assumed to select.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 313.

Officers of the local land office are not empowered to approve any selection under this act, but are expressly required to refer the question in respect to the condition and character of the land sought to be selected to the General Land Office for consideration, and the power rests with it to determine whether the land sought is vacant and open to settlement.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 45.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 310.

C. EFFECT AND VALIDITY OF REGULATIONS.

The regulations of the Land Department for the purpose of carrying into effect the provisions of this act have the force and effect of laws.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.
United States v. Maid, 116 Fed. 650, p. 651.

The regulations of the Commissioner of the Land Office relative to the selections of lieu lands under this statute are reasonable and are well calculated to carry into effect the intent of Congress and the true meaning of the act and are properly within the limitations of the law for the enforcement of which they were promulgated.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 11.
Anchor v. Howe, 50 Fed. 366.
Iron Co. v. James, 89 Fed. 811, p. 814.
Hoover v. Salling, 102 Fed. 716, p. 720.
Poppe v. Athearn, 42 Cal. 606, p. 609.
Chapman v. Quinn, 56 Cal. 266, p. 273.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 309.
United States v. Maid, 116 Fed. 650, p. 651.

This statute gives the right of selection to the party desiring to avail himself of the exchange proposed by Congress, subject only to the condition that the lands selected

shall be vacant and open to settlement; but it does not undertake to describe how the condition shall be ascertained and determined, but such selection may be required to be made under general rules of the land office.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 42.

d. PRACTICE.

An unqualified nonmineral affidavit is necessary to be filed with an application to select lands under the exchange provisions of this act.

Cook, In re, 33 L. D. 109.

The fact that the protest filed in the Land Office in an application for a patent is insufficient to warrant or justify a hearing in respect to the mineral character of the land in controversy is not sufficient to entitle the applicant for the patent to an injunction to protect his claim to possession, as the sufficiency of such a protest is a matter for the decision of the Land Department itself.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 40.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 314.

The selections of lieu lands under this act must be made in conformity with the rules and regulations of the Land Department, and applications for change of entry must be forwarded by the local officers to the Commissioner of the General Land Office and notice of the selection must be given by publication, and the rules and regulations adopted are not inconsistent with the provisions of the act.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 45.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 13.

e. LANDS SUBJECT TO SELECTION—CONDITIONS.

Lands open to settlement under this statute must not be known to be valuable for minerals or reserved from settlement for any other purpose, and the officers of the Government can not be expected to know whether lands selected under this act are vacant and not known to be valuable for minerals and thus subject to selection, nor can a selection be lawfully accepted until there is a showing that the selected land is vacant and that it is not known to be valuable for mineral.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 17.
Kern Oil Co. v. Clarke, 30 L. D. 550.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 314.

The selections under this act must be confined to the vacant, surveyed, and nonmineral public lands which are subject to homestead entry.

Walker, In re, 36 L. D. 495, p. 496.

One of the essentials of a claim under this act is that the land shall be of the character prescribed by the declaration and that selections shall be confined to vacant, nonmineral public lands which are subject to homestead entry.

Walker, In re, 36 L. D. 495, p. 496.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 312.

Under this section it does not follow that because no mineral has been found land in controversy is unoccupied where it is shown that another person claiming it to be mineral is in possession thereof and diligently at work to discover minerals.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14.

The land which may be selected under the provisions of this act as vacant land open to settlement, and to be vacant within the meaning of the statute it must be unoccupied, and to be open to settlement the land must, among other things, not be known to contain valuable mineral deposits, and land which is occupied by another or which

is known to contain valuable mineral deposits is therefore not subject to selection under this act, and the burden is on the applicant to show that the land applied for is of the character contemplated by the act.

Gray Eagle Oil Co. v. Clarke, 30 L. D. 570, p. 580.
Kern Oil Co. v. Clotfelter, 30 L. D. 583, p. 587.
See Gray Eagle Oil Co., v. Clarke, 31 L. D. 303 (on review).

By this act the Government offers to exchange any of its lands that are vacant and open to settlement for a like quantity of lands within a forest reservation named, and only a claimant of a tract in such forest reservation can relinquish the same and select a tract of public land in like quantity in lieu thereof, but in doing so he is confined to lands which are both vacant and open to settlement and must not be occupied by other or reserved from settlement on account of their known mineral character.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 16.
Kern Oil Co. v. Clarke, 30 L. D. 550, p. 555.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 311.

Under this act it must appear that at the date of selection the selected lands were unoccupied, as well as nonmineral in character, and the selector does not secure a vested right until such proof is submitted.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 314.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.

The fact that a prospector has no absolute right to the exclusive possession of mineral lands covered by a location as against the Government and the Government might terminate his license at any time does not determine the rights of a prospector under this statute, as Congress did not grant the right to sell any lands unless they were vacant; and agricultural lands not vacant and open to settlement can not be selected as lieu lands under this statute.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 15.

Where land is found to be mineral in character it is no longer subject to selection under this act and no right can be secured by any subsequent attempt to complete or make effectual an incomplete selection under which no right vested prior to the discovery or the development of the mineral quality of the land.

Cobb, In re, 31 L. D. 220, p. 221.
See Kern Oil Co. v. Clarke, 30 L. D. 550.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.

Where there has been a claim of mineral character to land through a period of many years and mineral claims have been the subject of frequent conveyances on valuable consideration, the termination of such mineral title must be shown before the land is open to settlement or subject to sale under any other law.

Goetjen, In re, 32 L. D. 209.
See Blair, In re, 33 L. D. 72, p. 73.

It is doubted if persons authorized to select vacant lands only under this statute are authorized to select lands in the actual bona fide occupancy of others under either the settlement laws or a mining location, though such mining location may be invalid because of no valid discovery of mineral, and no such selection can be made by any sort of fraud or circumlocution.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 46.

Equity will not relieve a person selecting land under this statute in lieu of lands situated within a forest reservation on affidavits showing its known mineral character and freedom from mining claim, and that it was entered for agricultural purposes, as against a locator of an oil placer-mining location made prior to such selection and followed by proper development work which was being prosecuted on the land when such selection was made and which development resulted in valuable producing

oil wells where it was also shown that such lands were valueless for agricultural purposes and situated in an oil district.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 313.
Johnston v. Corson Gold Min. Co., 157 Fed. 145, p. 152.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4.

The fact that a mining claim bears timber while not determinative of the question of its mineral character is a proper element of proof and is admissible in evidence as bearing upon the applicant's good faith and the weight and credibility to be attached to his testimony in the controversy, and evidence relating to an alleged contract for the sale of the timber from the mining claim is admissible for the same purpose.

Palmer, In re, 38 L. D. 294, p. 298.

f. "VACANT AND UNOCCUPIED"—MEANING.

See 31 Stat. 588, p. 1157.

The word "vacant," as used in this act, applies to lands which have not been appropriated by any person.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, pp. 13, 17.

The word "vacant," as used in this statute, had not prior to this statute acquired an exclusive, special, or restricted and technical meaning, the equivalent of "not taken or appropriated of record," and the use of the word was not necessary to except from selection lands claimed, appropriated, or reserved as shown by the land office records, and there can be no reasonable objection to the construction of the work in its primary or ordinary sense of unoccupied.

Kern Oil Co. v. Clarke, 31 L. D. 288, p. 294.
See Atherton v. Fowler, 96 U. S. 513, p. 518.
Kern Oil Co. v. Clarke, 30 L. D. 550.
Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.
Cobb, In re, 31 L. D. 220.
Harris v. Diamond, 39 L. D. 383, p. 384.

Proof that land included in an application for patent as a mining claim is uninhabited is not equivalent to the proof that it was vacant or unoccupied.

Cobb, In re, 31 L. D. 220, p. 221.

Under this section land is not vacant and open to settlement where at the time a competent locator has taken possession of lands claimed to be mineral and is diligently at work to prove it to be such, as it is then occupied under a claim and color of right, and it matters not that such person had not at that time acquired any rights against the United States though no valid location of a mining claim had actually been made.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 14
Gird v. California Oil Co., 60 Fed. 531, p. 545.
Kern Oil Co. v. Clarke, 30 L. D. 550.
Kern Oil Co. v. Clarke, 31 L. D. 288, p. 293.
See Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.
Leaming v. McKenna, 31 L. D. 318, p. 320.

The fact that a miner is in the possession of land or of a mining claim, working it as such, or even prospecting, shows that the land is not vacant within the meaning of this statute.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 15.

It cannot be said that lands are vacant and open to settlement under this statute because the books of the Land Office do not show that they have been settled, as the possessory rights of miners have always been recognized in law, although in all such cases the legal title to the land remains in the Government.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 16.

The rule that a settlement can not be made upon public lands already occupied and as against existing occupants the settlement of another is ineffective to establish a preemptive right applies to the selection of the lieu lands under this statute.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 18.
See Atherton v. Fowler, 96 U. S. 513.
Hosmer v. Wallace, 97 U. S. 575.
Quinby v. Conlan, 104 U. S. 420.

Under this statute a person relinquishing his forest reserve land may select in lieu thereof a tract of vacant land open to settlement, but he can not select in lieu thereof any such public land that is not vacant or open to settlement.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 13.

Lands occupied by a cemetery are not vacant within the meaning of this act and can not be selected as nonmineral public land open to settlement.

Harris v. Diamond, 39 L. D. 383, p. 384.

A statement in the affidavit required by this act, showing the land is vacant and unoccupied, to the effect that the selected land was "unoccupied by anyone having color of title thereto," is not a sufficient showing as to the condition of the land.

Leaming v. McKenna, 31 L. D. 318, p. 319.
See Harris v. Diamond, 39 L. D. 383, p. 384.

g. CHARACTER DETERMINED AT DATE OF SELECTION.

In the selection to be made under this statute the inquiry is limited to the character and condition of the land at the time the selection is made, and it is altogether unreasonable to require him to make a selection based upon what may be disclosed in that respect in the future.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 574.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 42.

Lands vacant and not known to contain mineral pass at the time of selection under this act, whether subsequently discovered to be mineral or not.

Kern Oil Co. v. Clarke, 30 L. D. 550, p. 564.
See Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

The question of whether land is vacant and not mineral and therefore subject to the grant, or whether it is occupied or mineral and therefore not subject to the grant, is to be determined and ascertained by the surveyor general; and if at the time of the survey the lands are occupied, or if they are known to be mineral, they must be excluded from the survey as not being subject to the grant.

Kern Oil Co. v. Clarke, 31 L. D. 288, p. 297.
See Shaw v. Kellogg, 170 U. S. 312, p. 332.
Baca Float No. 3, In re, 29 L. D. 44.
Kern Oil Co. v. Clarke, 30 L. D. 550.
Cobb, In re, 31 L. D. 220.
Gray Eagle Oil Co. v. Clarke, 31 L. D. 303 (on review).
Harris v. Diamond, 39 L. D. 383, p. 384.

Congress did not intend that an exchange of lands under this statute once made should be rendered nugatory by any future discovery of mineral.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 44.

Where a person making selection under this act has complied with all the terms and conditions necessary to entitle him to a patent, he acquires a vested interest therein and is in fact the equitable owner, and the question respecting the class and character of the selected lands must be determined by the conditions existing at the time when

all requirements necessary to obtain title had been complied with by the selector, and a subsequent discovery of mineral in the land selected can not affect his right or title.

Kern Oil Co. v. Clarke, 30 L. D. 550, p. 565.
See Hawley v. Diller, 178 U. S. 476.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.
Kern Oil Co. v. Clarke (on review), 31 L. D. 288.
Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.
Weed v. Snook, 144 Cal. 439, p. 444.

While ordinarily as against the Government a selector might be permitted to perfect his selection by making the necessary proof at a subsequent time, yet his rights must be determined as of the date the selection is completed, and if prior to that time mineral oil had been discovered in the near vicinity of the lands and the lands in the particular neighborhood were being generally prospected and explored in an effort to find oil in paying quantity, and to that end wells were being drilled or bored deep into the earth at great cost, and the area and extent of the oil deposit was then being ascertained and the mineral character of specific tracts made known, and where such condition exists at the time of the final proof by the selector, his selection must fail.

Gray Eagle Oil Co. v. Clarke, 30 L. D. 570, p. 581.
See Kern Oil Co. v. Clarke, 30 L. D. 550.
Kern Oil Co. v. Clotfelter, 30 L. D. 583.
Kern Oil Co. v. Clarke (on review), 31 L. D. 288.

This statute conferring the right on the settler to make a selection in lieu of the lands taken by him in the timber reservation does not make that right in any way depend upon the intent with which it is made, and the mere hope of finding oil on the lands selected will not defeat an otherwise valid selection.

Olive Land Dev. Co. v. Olmstead, 103 Fed. 568, p. 578.
See Iron Silver Min. Co. v. Reynolds, 124 U. S. 374.
Sullivan v. Iron Silver Min. Co., 143 U. S. 431.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 39.

Where an application is filed for a lieu land selection under this act, together with proof that the land selected was vacant, unoccupied, and nonmineral, but without proof as to its being nonsaline in character, and where before the application is completed to conform to the regulations, the tract selected is withdrawn from entry for the purpose of creating a forest reservation, the application must be rejected as not coming within the exception to this act.

Miller, In re, 33 L. D. 121, p. 122.
See Hedges, In re, 32 L. D. 520.

An application to make forest lieu selection under this act will not be defeated from the fact that the land embraced in the application has been classified as coal land.

Moses, In re, 40 L. D. 276, p. 277.

h. VESTED RIGHTS AND TITLES PROTECTED.

A court of equity will protect the possessory right of a selector of forest reservation lieu land until the patent therefor is issued by the General Land Office as against a subsequent attempt to locate a mining claim thereon by a third person, on the ground that the surface indications indicated that the selection was made in the hope of discovering oil.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 580.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 41.

No vested right is obtained under this act until the selector has perfected his selection by the submission of proof that the land selected is nonmineral and unoccupied,

and until this condition is complied with the land is subject to exploration under the mining laws, and if found to be mineral in character it is no longer subject to selection.

Cobb, In re, 31 L. D. 220, p. 221.
See Gray Eagle Oil Co. v. Clarke, 30 L. D. 570, p. 581.
Peavey, In re, 31 L. D. 186.
Kern Oil Co. v. Clarke, 31 L. D. 288.
Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.

Until the Land Department determines the questions of law and fact involved in a proper selection and a formal approval has been given the equitable title to lands selected does not pass from the Government.

Miller v. Thompson, 36 L. D. 492, p. 494.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301.
Clearwater Timber Co. v. Shoshone County, 155 Fed. 612.

A person making an exchange of land under this act only acquires a vested interest in the lands selected when he lawfully enters thereon and in all respects complies with the requirements of the law under which he claims his rights.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 Fed. 4, p. 12.
See Hawley v. Diller, 178 U. S. 476.
Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 310.

Until selections are perfected by submitting the required proof the selector acquires no vested rights under this act as against either the Government or an adverse claimant.

Hedges, In re, 32 L. D. 520, p. 521.
Kern Oil Co. v. Clarke, 30 L. D. 550.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.

An entryman under this act on lands selected in lieu of lands within a forest reservation can not, on an affidavit stating its known mineral character and that it was free from mining claims and entered for agricultural purposes, be granted relief in equity against another claimant in possession under an oil placer mining location, made prior to such entry and where development work has being diligently prosecuted at the time such entry was made.

McLemore v. Express Oil Co., 158 Cal. 559, p. 564.

The complete equitable title of the complainant to the lands selected as lieu land can not exist until a favorable decision by the Land Department has been made as to the sufficiency of the complainant's proof of his right to the selected land, and there must be a decision somewhere regarding the rights asserted by the selector of lands selected under this act before a complete equitable title to the land can exist; but the mere filing of papers can not create such a title and the seller can not decide the question for himself, but his application must comply with and conform to the statute.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 312.
Moses, In re, 33 L. D. 333, p. 334.

When an applicant under the nonmineral laws has complied with all the terms and conditions necessary to secure title to a particular tract of land, he acquires a vested interest therein if it is then not known to contain valuable deposits and is otherwise of the condition and character subject to disposition under the law by which he seeks title, and no subsequent discovery of mineral in the land or other change in its condition or character can impair or in any manner affect his right.

Bakersfield Fuel & Oil Co. v. Saalburg, 31 L. D. 312, p. 314.
See Kern Oil Co. v. Clarke, 30 L. D. 550.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.
Kern Oil Co. v. Clotfelter, 30 L. D. 583.
Kern Oil Co. v. Clarke, 31 L. D. 288.

i. MINERAL LANDS NOT SELECTABLE.

Mineral lands were not authorized to be selected under this statute in the selection of lieu lands for those surrendered in a forest reservation.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 33.

Lands valuable for mineral deposits are not subject to forest lieu selection under this act.

Meiklejohn v. Hyde, 42 L. D. 144, p. 148.

j. LANDS LOCATED NEAR MINERAL LANDS—EFFECT.

The evidence bearing upon the mineral character of the lands selected will not be restricted to mineral discoveries upon the lands themselves and to their geological formation; but the inquiry respecting both the occupancy and character of the selected lands will be directed to the conditions existing and known at the time, but no consideration will be given to any changes subsequently occurring or to any mineral discovery or development subsequently made.

Kern Oil Co. v. Clotfelter, 30 L. D. 583, p. 587.
See Kern Oil Co. v. Clarke, 30 L. D. 550.
Gray Eagle Oil Co. v. Clarke, 30 L. D. 570.
Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.
Hirshfeld v. Chrisman, 40 L. D. 112, p. 116.

This section is a congressional recognition that land near but not contiguous to known veins or lodes may be nonmineral in character and enterable as such.

United States v. Kostelak, 207 Fed. 447, p. 453.

A valid selection and location made in lieu of lands entered in a forest reservation is not rendered invalid if made on lands vacant and open to settlement by the fact that it is situated in the vicinity of producing oil wells and that it has surface indications of oil, or that it was selected with a view to its possible value as oil lands where no discovery of oil has in fact been made thereon.

Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 574.

k. EFFECT OF PATENT FOR LIEU SELECTIONS.

The issue of patent upon a nonmineral claim to land does not conclusively establish its nonmineral character for purposes of exchange under this act, as such a patent may be inadvertently or erroneously issued for land known to be mineral, or the mineral character of the land may be discovered after the issuance of such nonmineral patent, but if the land be known to be mineral at the date of its relinquishment, it is not good base for exchange under this act.

Blair, In re, 33 L. D. 72, p. 73.

The issue of a patent to the railroad company under this act precludes any presumption that the land so patented is of mineral character.

Blair, In re, 33 L. D. 72, p. 73.
Northern Pac. R. Co., In re, 32 L. D. 342, p. 344.

l. MINERAL SURVEYOR CAN NOT MAKE SELECTION.

A deputy mineral surveyor, though not appointed for a fixed period, is prohibited under the law from making a forest lieu selection under this statute.

Powell, In re, 39 L. D. 177, p. 179.

27 STAT. 466, DECEMBER 22, 1892.

ABANDONED MILITARY RESERVATIONS—DISPOSAL—WYOMING.

AN ACT To provide for the disposal of certain abandoned military reservations in Wyoming.

Be it enacted, etc., That all public lands now remaining undisposed of within the abandoned military reservations in the State of Wyoming, known as Fort Fetterman Hay Reservation, the Fort Fetterman Old Wood Reserve, situated in T. 32 N., ranges 74 and 75 W., established August 29, 1872, and the Fort Fetterman New Wood Reserve, situated in townships 28 and 29, range 71 W., are hereby made subject to disposal under the homestead law only: Provided, That actual occupants thereon upon the 1st day of January, 1892, shall have the preference right to make one entry not exceeding one quarter section under existing land laws if qualified, which shall include their respective improvements: Provided further, That any of such lands as are occupied for town-site purposes and any of the lands that may be shown to be valuable for coal or minerals shall be disposed of as now provided for lands subject to entry and sale under the town site, coal, or mineral land laws respectively.

29 STAT. 11, 2 SUPP. R. S. 447, FEBRUARY 20, 1896.

FOREST RESERVATIONS—OPENED TO LOCATION OF MINING CLAIMS.

AN ACT To open forest reservations in the State of Colorado for the location of mining claims.

Be it enacted, etc., That the forest reservations in the State of Colorado, known as the Pikes Peak Forest Reserve, the Plum Creek Forest Reserve, and the South Platte Forest Reserve, established by Executive proclamations dated, respectively, March 18, 1892, June 23, 1892, and December 9, 1892, in the State of Colorado in accordance with section 24 of the act of March 3, 1891, from and after the passage of this act, shall be open to the location of mining claims thereon for gold, silver, and cinnabar, and that title to such mining claims may be acquired in the same manner as it may be acquired to mining claims upon the other mineral lands of the United States for such purposes: Provided, That all locations of mining claims heretofore made in good faith within said reservations, and which have been held and worked in the same manner as mining claims are held and worked under existing law upon the public domain, are validated by this act.

SEC. 2. That owners of valid mining locations made and held in good faith under the terms of this act, shall be, and are hereby, authorized and permitted to fell and remove from such mining claims any timber growing thereon, for actual mining purposes in connection with the particular claim from which the timber is felled or removed, but no other timber shall be felled or removed from any other portions of said reservations by private parties for any purpose whatever.

29 STAT. 95, APRIL 12, 1896.

MILITARY RESERVATIONS—DISPOSAL OF ABANDONED PORTIONS—MONTANA.

AN ACT Providing for disposal of lands on abandoned portions of the Fort Assinniboine Military Reservation in Montana and for the relief of certain settlers thereon.

Be it enacted, etc., That all lands which have been or may hereafter be excluded from the limits of the Fort Assinniboine Military Reservation in the State of Montana shall be open to the operation of the laws regulating homestead entry, except section 2301 of the Revised Statutes, and to entry under the town-site laws and the laws governing the disposal of coal lands, desert lands, and mineral lands, and shall not be subject to sale under the provisions of any act relating to the sale of abandoned military reservations: Provided, That if the entire reservation be abandoned for military purposes this act shall not apply to an area 1 mile square embracing the Government buildings at Fort Assinniboine.

SEC. 2. That all entries heretofore made in good faith under either the homestead, town-site, desert-land, or mineral-land laws of the United States upon any of the excluded portions of said Fort Assinniboine military reservation shall be held valid, and the Secretary of the Interior is directed to reinstate such entries under either of said laws as he may heretofore have canceled because of a construction based upon the opinion that the laws mentioned in section 1 of this act did not apply to the abandoned portions of said reservation.

30 STAT. 993, P. 994, MARCH 2, 1899.

MOUNT RANIER NATIONAL PARK—MINERAL LAND LAWS EXTENDED TO PARK.

AN ACT To set aside a portion of certain lands in Washington, known as the Pacific Forest Reserve, as a public park, to be known as the Mount Ranier National Park.

Be it enacted, etc., * * *

SEC. 3. That upon execution and filing with the Secretary of the Interior, by the Northern Pacific Railroad Co. of proper deeds releasing and conveying to the United States the land in the reservation hereby created, also the lands in the Pacific Forest reserve which have been heretofore granted by the United States to said company, whether surveyed or unsurveyed, and which lie opposite said company's constructed road, said company is hereby authorized to select an equal quantity of nonmineral public land, so classified as nonmineral at the time of actual Government survey, which has been or shall be made, of the United States not reserved and to which no adverse right or claim shall have attached or have been initiated at the time of the making of such selection, lying within any State into or through which the railroad of said Northern Pacific Railroad Co. runs, to the extent of the lands so relinquished and released to the United States.

* * * * * * *

SEC. 5. That the mineral land laws of the United States are hereby extended to the lands lying within the said reserve and said park.

A. RESERVATION—MOUNT RAINIER NATIONAL PARK.

1. EXCHANGE OF LANDS RATHER THAN SELECTIONS.
2. NONMINERAL AND UNOCCUPIED SURVEYED LANDS SELECTABLE ONLY.
3. CLASSIFICATION OF LANDS BY FIELD NOTES OF SURVEY.
4. LANDS SELECTED IN EXCHANGE MUST BE NONMINERAL.
5. GRANT OF LANDS IN EXCHANGE FOR LANDS "WITHIN THE GRANT."
6. SELECTION OF LANDS CLASSIFIED AS MINERAL—EFFECT.
7. COAL AND IRON LANDS AS MINERAL UNLESS EXCLUDED.
8. LIEU LANDS PROTECTED FROM SUBSEQUENT DISCOVERY.

1. EXCHANGE OF LANDS RATHER THAN SELECTIONS.

See 13 Stat. 365; 28 Stat. 683.

The selections authorized by this act are not indemnity selections in any proper sense, but are lands received in exchange for lands surrendered and reconveyed to the United States, and the railroad company is not authorized to search throughout the State through which its railroad runs and select lands containing iron or coal, as Congress intended to confer no such right upon the company.

Brown v. Northern Pac. R. Co., 31 L. D. 29, p. 32.

This act recognizes the grant by the act of 1864 (13 Stat. 365) as a thing complete and settled, and it proposes an exchange of the public lands for the company's grant located within the Pacific Forest Reserve, and the terms and conditions of the exchange are completely expressed in the act and is not governed by the terms of the former act providing that the word "mineral" should not be held to include iron or coal.

Brown v. Northern Pac. R. Co., 31 L. D. 29, p. 31.

The lieu lands to be selected under this act still retain the general character of a donation and the valuable right has been given to the grantee to choose its lieu lands from any nonmineral public land lying in any State and over or through which its railroad runs; but whether the act is one of grant or exchange, it is subject to the construction that nothing passes by implication and unless the words of the grant are clear and explicit as to the land conveyed, that construction which is most favorable to the Government must prevail, and so construed it conferred the general authority to select an equal quantity of nonmineral public lands which means a selection from the nonmineral public lands and only from nonmineral public lands.

United States v. Northern Pac. R. Co., 170 Fed. 498, p. 501.
See Northern Pac. R. Co. v. United States, 176 Fed. 706.

The provisions for the exchange of lands under this statue is that for all lands within the exterior boundaries of the parts conveyed to the United States by the railroad company, the latter is authorized to select an equal quantity of nonmineral lands so classified as nonmineral at the time of actual Government survey, and the statute can not be construed so as to eliminate the word "nonmineral," and Congress requires that its nonmineral land shall be disposed of only in accordance with the provisions of the statutes governing that class of land.

Northern Pac. R. Co. v. United States, 176 Fed. 706, p. 708.
Affirming United States v. Northern Pac. R. Co., 170 Fed. 498.

2. NONMINERAL AND UNOCCUPIED SURVEYED LANDS SELECTABLE ONLY.

Section 3 of this act authorizes the railroad company to select nonmineral public lands so classified at the time of actual Government survey; but if a bona fide settle-

ment claim had attached to these lands and was subsisting at the date of the company's attempted selection, then the selection can not stand, and it is immaterial that such settlement claim was subsequently abandoned.

Frank v. Northern Pac. R. Co., 37 L. D. 193, p. 194.
Frank v. Nortnern Pac. R. Co., 37 L. D. 502.

No selection was possible under this grant while the lands were unsurveyed, and the right of further selection was terminated by proclamation so long as the lands remain reserved for forestry purposes.

Northern Pac. R. Co. v. Mann, 33 L. D. 621, p. 624.

The selections of the railroad company are made under the provisions of this act.

Idaho v. Northern Pac. R. Co., 37 L. D. 135.

A relinquishment duly executed by the railroad company was accepted as sufficient and the department recognized the Northern Pacific Railway Company as the successor in interest to the Northern Pacific Railroad Company to the land granted by the original act of July 2, 1864 (13 Stat. 365), and the acts amendatory and supplemental thereto, and the Northern Pacific Railway Company was authorized to select an equal quantity of nonmineral public lands classified as such at the time of the actual Government survey and to which no adverse right shall have attached at the time of making the selection, and the company is not restricted in its selection to odd-numbered sections.

Ferguson v. Northern Pac. R. Co., 33 L. D. 634, p. 636.
Comstock v. Northern Pac. R. Co., 34 L. D. 88.

3. CLASSIFICATION OF LANDS BY FIELD NOTES OF SURVEY.

The field notes of the survey of the subdivisional lines of a township clearly constitute a return or classification by the surveyor general of the entire township and each legal subdivision thereof as coal land, and the term "mineral" used in the description is intended to refer to the only mineral specifically mentioned in such field notes, and that is coal.

Brown v. Northern Pac. R. Co., 31 L. D. 29, p. 31.

The custom in surveying public lands is to make in the field notes and surveyor's returns notations of the mines, outcroppings, and evidences of valuable mineral deposits where found, and to say nothing upon the subject where no evidences of mineral deposits are found, and when the field notes and surveyor's returns make no such notation of minerals, then such lands may be considered and treated as nonmineral in the classification provided by this statute.

Davenport v. Northern Pac. R. Co., 32 L. D. 28, p. 30.
See Bedal v. St. Paul, etc., R. Co., 29 L. D. 254, p. 255.

Congress did not intend that the return made at the time of actual Government survey should be conclusive as to the character of the land, and the earlier classification under the act of February 26, 1895 (28 Stat. 683), may be considered as a matter of evidence the same as any other material fact bearing upon the character of the land.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 139.

By confining the right of the railroad company to a selection of land returned as nonmineral at the date of survey, the department is bound to give some weight to that return as evidence of the actual character of the land, and this return itself is prima facie evidence that the land is in fact of the character described.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 139.

The report of the surveyor is in effect a nonmineral return.

Bedal v. St. Paul, etc., R. Co., 29 L. D. 254.
Idaho v. Northern Pac. R. Co., 37 L. D. 135.
Northern Pac. R. Co., In re, 40 L. D. 64.

4. LANDS SELECTED IN EXCHANGE MUST BE NONMINERAL.

The words descriptive of the land which may be selected by the railroad company under this act are "nonmineral public lands classified as such at the time of the actual Government survey," and the two elements are separately enumerated, and the land selected must not have been known to be mineral in fact at the time of selection, and it must have been returned as nonmineral at the time of the Government survey.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 139.

The words "public lands" in this statute are qualified by the adjective "nonmineral" which precedes it, as well as by the phrase "so classified as nonmineral at the time of the actual Government survey which has been or shall be made," which follows them, and means that lands authorized by Congress to be taken by the railroad company in lieu of lands to be conveyed by it to the United States must not only be classified by the Government surveyor as nonmineral, but must be nonmineral in fact.

Northern Pac. R. Co. v. United States, 176 Fed. 706, p. 708.
Affirming United States v. Northern Pac. R. Co., 170 Fed. 498.
See Northern Pac. R. Co., In re, 40 L. D. 64, p. 67.

Any lands selected in lieu of lands surrendered must be of the general class nonmineral and must have been so classified in the past or must be so classed in the future, and the fact of their nonmineral character must exist, and while classification is essential before the right of selection attaches, yet if the lands are not nonmineral the fact that they have been so classified does not operate as a binding determination that they were not nonmineral in character so as to preclude the Government from asserting its right to have lands which are mineral in fact excluded from those out of which a selection may be made, as the true character of the land and not classification without regard to such true character is the fundamental meaning of the act.

United States v. Northern Pac. R. Co., 170 Fed. 498, p. 501.
Affirmed Northern Pac. R. Co. v. United States, 176 Fed. 706.

The Land Department is unwarranted in assuming that lands returned as nonmineral at the date of the survey are not subject to selection under this act, where the classification under the act of February 26, 1895 (28 Stat. 683), is not set up as the true one, and no question is raised as to the correctness of the return, as the railroad company is not required to overturn the earlier classification.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, pp. 139, 140.
See Davenport v. Northern Pac. R. Co., 32 L. D. 28, p. 30.
Bedal v. St. Paul, etc., R. Co., 29 L. D. 254, p. 255.

Lands selected by the railroad company under this act may not in fact be mineral, but the Land Department can inquire into the question as to whether or not the lands are mineral where they are not classified as nonmineral by the return of the surveyor.

Northern Pac. R. Co., In re, 40 L. D. 64, p. 66.

The question as to the mineral or nonmineral character of land to be selected is one between the Government and the railroad company, and where no protest is made against the selection upon the ground that the land selected is mineral, the company will be permitted to perfect its claim, and if the land were in fact mineral this would defeat the right of the State to take the land under a school grant.

Idaho v. Northern Pac. R. Co., 37 L. D. 135, p. 140.

5. GRANT OF LANDS IN EXCHANGE FOR LANDS "WITHIN THE GRANT."

The expressions "land grant" and "granted lands" and "lands within the grant" and similar expressions include not only the lands within the place or primary limits,

but also those within the secondary or indemnity limits, but it was not intended by this act to grant a right of selection for other lands in lieu of those which might fall within these reservations so far as they were included within the secondary or indemnity belt.

Northern Pac. R. Co. v. Mann, 33 L. D. 621, p. 624.
See Northern Pac. R. Co. v. Frei, 34 L. D. 661, p. 662.

6. SELECTION OF LANDS CLASSIFIED AS MINERAL—EFFECT.

If at the time of the filing of the application for land by the railroad company the the Land Office finds the land applied for was classified as mineral at the time of the survey, then the selection must be rejected, and if rated by the Government surveyor as nonmineral the inquiry as to the true character of the land is open to the Government up to the time of the issuance of its patent.

Northern Pac. R. Co. v. United States, 176 Fed. 706, p. 709.
See Iron Silver Min. Co. v. Campbell, 135 U. S. 286.
Williams v. United States, 138 U. S. 514.
Hawley v. Diller, 178 U. S. 476.
Diller v. Hawley, 81 Fed. 651.

7. COAL AND IRON LANDS AS MINERAL UNLESS EXCLUDED.

The special express provisions made in certain acts of Congress to aid in the construction of rules to the effect that coal and iron lands are not to be deemed mineral within the provisions of such acts show that such lands would be included as mineral if not specifically excluded, and undoubtedly the lands to be taken under this act are such as the definitions of Congress and the decisions of the courts have attached to the word "mineral" since 1864.

United States v. Northern Pac. R. Co., 170 Fed. 498, p. 500.
See United States v. Mullan, 10 Fed. 785.
Barden v. Northern Pac. R. Co., 154 U. S. 288.
Northern Pac. R. Co. v. Soderberg, 188 U. S. 526.

The general policy of Congress has been to reserve mineral lands from grants made of public lands, and coal lands are mineral lands within the meaning of this policy and as generally employed in the laws regulating disposal of the public domain.

United States v. Northern Pac. R. Co. 170 Fed. 498, p. 500.
Affirmed Northern Pac. R. Co. v. United States, 176 Fed. 706.
See Mullan v. United States, 118 U. S. 271.
Northern Pac. R. Co. v. Soderberg, 188 U. S. 526.

8. LIEU LANDS PROTECTED FROM SUBSEQUENT DISCOVERY.

The filing of a coal declatory statement nearly a year after a lieu selection under this act is regularly presented can not of itself affect the lieu selection, nor is such a selection affected by a protest filed nearly a year thereafter, in which it is stated that at the time of filing the protest the land contained mineral deposits.

Davenport v. Northern Pac. R. Co., 32 L. D. 28, p. 30.

38 STAT. 699, AUGUST 22, 1914 (PUBLIC NO. 177, 63D CONGRESS).

GLACIER NATIONAL PARK—MINERALS PROTECTED.

AN ACT To accept the cession by the State of Montana of exclusive jurisdiction over the lands embraced within the Glacier National Park, and for other purposes.

Be it enacted, etc., That the provisions of the act of the legislature of the State of Montana, approved February 17, 1911, ceding to the United States exclusive jurisdiction over the territory embraced

within the Glacier National Park are hereby accepted, and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. * * *

SEC. 4. * * * That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits other than those legally located prior to the passage of the act of May 11, 1910. (36 Stat., 354). * * * Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, other than those legally located prior to the passage of the act of May 11, 1910 (36 Stat., 354), natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits other than those legally located prior to the passage of the act of May 11, 1910 (36 Stat., 354), natural curiosities, or other matter or thing growing or being thereon, or situated therein, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than $500, or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. * * *

31 STAT. 672, p. 676, JUNE 6, 1900.

INDIAN RESERVATIONS—MINERAL LANDS OPEN TO LOCATION.

AN ACT To ratify an agreement with the Indians of the Fort Hall Indian Reservation in Idaho, and making appropriations to carry the same into effect.

Be it enacted, etc. * * *

SEC. 5. That on the completion of the allotments and the preparation of the schedule provided for in the preceding section, and the classification of lands as provided for herein, the residue of said ceded lands shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States only, excepting as to price and excepting the sixteenth and thirty-sixth sections in each congressional township, which shall be reserved for common-school purposes and be subject to the laws of Idaho: Pro-

vided, That all purchasers of lands lying under the canal of the Idaho Canal Co., and which are susceptible of irrigation from the water from said canal, shall pay for the same at the rate of $10 per acre; all agricultural lands not under said canal shall be paid for at the rate of $2.50 per acre, and grazing lands at the rate of $1.25 per acre, one-fifth of the respective sums to be paid at time of original entry, and four-fifths thereof at the time of making final proof; but no purchaser shall be permitted in any manner to purchase more than 160 acres of the land hereinbefore referred to; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections 2304 and 2305 of the Revised Statutes of the United States, shall not be abridged, except as to the sum to be paid as aforesaid.

The classification as to agricultural and grazing lands shall be made by an employee of the General Land Office under the direction of the Secretary of the Interior.

No lands in sections 16 and 36 now occupied, as set forth in article 3 of the agreement herein ratified, shall be reserved for school purposes, but the State of Idaho shall be entitled to indemnity for any lands so occupied: Provided, That none of said lands shall be disposed of under the town-site laws for less than $10 per acre: And provided further, That all of said lands within 5 miles of the boundary line of the town of Pocatello, shall be sold at public auction, payable as aforesaid, under the direction of the Secretary of the Interior for not less than $10 per acre: And provided further, That any mineral lands within said 5-mile limit shall be disposed of under the mineral land laws of the United States, excepting that the price of such mineral lands shall be fixed at $10 per acre instead of the price fixed by the said mineral land laws.

* * * * * * *

That should any of said lands alloted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

* * * * * * *

A. CONSTRUCTION OF ACT.

1. MINERAL DEPOSITS ON INDIAN ALLOTMENTS.
2. MINING LAWS EXTENDED TO ALLOTTED LANDS.
3. RIGHT TO PROSPECT ALLOTMENTS FOR MINERALS—LIMITATIONS.
4. TIME FOR MAKING MINERAL LOCATIONS ON ALLOTMENTS.
5. MINERAL CHARACTER OF LAND—BURDEN OF PROOF.

1. MINERAL DEPOSITS ON INDIAN ALLOTMENTS.

A consideration of this entire act and of the policy of the Government in dealing with Indian allotments and with mineral deposits in public lands requires that the mineral provision of this act be read as if referring to the lands which were to be "allotted to said Indians, or open to settlement under this act," and this consideration

gives to this mineral provision a common sense and just operation in harmony with the system of legislation affecting allotments in severalty and with the general operation of the mining laws upon public lands.

Acme Cement & Plaster Co., In re, 31 L. D. 125, p. 128.
See Heydenfeldt v. Daney Gold, etc., Min. Co., 93 U. S. 634, p. 639.

Valuable mineral deposits found upon land allotted in severalty to an Indian under this act are not withheld from such allottee or reserved to the United States, and they can not be acquired under the mining law, but such land may, with the approval of the Secretary, be leased by such allottee under the general statute relating to the giving of mining leases by Indian allottees.

Acme Cement & Plaster Co., In re, 31 L. D. 125, p. 128.

2. MINING LAWS EXTENDED TO ALLOTTED LANDS.

This statute opens to settlement lands allotted to the Comanche, Kiowa, and Apache Tribes of Indians, containing valuable mineral deposits.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 431.

The time when the mineral deposits were to be opened for location and entry is fixed by the term "upon the passage of the act," and this is emphasized by the provision extending the mineral laws of the United States over such lands, and these words of present import indicate that the law was to operate at once upon the lands to be affected thereby, and the law was to operate upon lands allotted to the Indians or open to settlement under the act.

Acme Cement & Plaster Co., In re, 31 L. D. 125, p. 126.

By this act only the lands which are to be allotted to the Indians, or to be opened to settlement thereunder, are made subject to the mining laws and to mineral exploration and entry, and the act does not extend the mining laws generally to the land ceded, as did the act of March 2, 1895 (28 Stat. 876, pp. 894-899).

Gypsite Placer Min. Claim, In re, 34 L. D. 54, p. 55.
See Acme Cement & Plaster Co., In re, 31 L. D. 125.
Instructions, In re, 32 L. D. 95.

3. RIGHT TO PROSPECT ALLOTMENTS FOR MINERALS—LIMITATIONS.

The mineral provision in this act does not subject to the mining laws or the mineral exploration and entry lands which have been allotted to Indians, or lands to which a homestead entryman has acquired fixed and vested rights by reason of his compliance with the homestead laws, and the act does not contemplate that these lands were always to be subject to mining laws or to mineral exploration and entry, but only so long as they should remain free from any vested right of ownership of any individual, and when title was earned by homestead entry or otherwise the land ceased to be subject to this mineral provision.

Acme Cement & Plaster Co., In re, 31 L. D. 125, p. 128.

4. TIME FOR MAKING MINERAL LOCATIONS ON ALLOTMENTS.

Under this act and the proclamation of the President issued July 4, 1901 (32 Stat. 1975), fixing August 6, 1901, as the beginning of the 60-day period prohibiting persons from entering or settling upon lands in the Comanche, Kiowa, and Apache Reservations, and a mineral claimant could not by staking and locating a mineral claim on the 8th day of August acquire any valid rights as against a homestead entry made on November 15, 1901.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 438.

5. MINERAL CHARACTER OF LAND—BURDEN OF PROOF.

Lands in Oklahoma, by virtue of the surveyor's return, are prima facie nonmineral, and this, together with the necessary nonmineral affidavit of a homestead entryman, impresses the land enbraced in his entry as nonmineral and agricultural in character and casts upon a mineral claimant the burden of proving the mineral character of the land.

Bay v. Oklahoma Southern Gas, etc., Min. Co., 13 Okla. 425, p. 426.

33 STAT. 363, APRIL 22, 1904.

MILITARY RESERVATIONS—FORT WALLA WALLA—SALE OF MINERAL LANDS.

AN ACT For the reappraisement and sale of the undisposed lands within the Fort Walla Walla Military Reservation, in the State of Washington.

Be it enacted, etc., That the lands originally embraced within the Fort Walla Walla Military Reservation, in the State of Washington, remaining undisposed of shall be reappraised, under the direction of the Secretary of the Interior, by legal subdivisions, and the appraisers, in their report, shall note the character of each legal subdivision and state whether it is chiefly valuable for stone, mineral, timber, agricultural, or grazing purposes; and if any of the legal subdivisions of said land is improved the appraiser shall appraise separately the improvements on said land and the land independently of such improvements, and they shall describe generally the character of such improvemets, and also report the names of the persons who made such improvements and the parties claiming to own the same.

34 STAT. 233, p. 234, JUNE 11, 1906.

FOREST RESERVATIONS—ENTRY SUBJECT TO MINING LAWS.

AN ACT To provide for the entry of agricultural lands within forest reserves.

Be it enacted, etc., * * *

SEC. 3. That all entries under this act in the Black Hills Forest Reserve shall be subject to the quartz or lode mining laws of the United States, and the laws and regulations permitting the location, appropriation, and use of the waters within the said forest reserves for mining, irrigation, and other purposes; and no titles acquired to agricultural lands in said Black Hills Forest Reserve under this act shall vest in the patentee any riparian rights to any stream or streams of flowing water within said reserve; and that such limitation of title shall be expressed in the patents for the lands covered by such entries.

RIGHTS OF WAY.

See Railroad grants, pp. 1099, 1105, 1129.

10 STAT. 28, AUGUST 4, 1852.

RAILROADS, PLANK ROADS, AND TURNPIKES.

AN ACT To grant the right of way to all rail and plank roads and macadamized turnpikes passing through the public land belonging to the United States.

Be it enacted, etc., That the right of way shall be, and is hereby granted to all rail and plank road, or macadamized turnpike companies that are now or that may be chartered within 10 years hereafter, over and through any of the public lands of the United States, over which any rail or plank road or macadamized turnpikes are or may be authorized by an act of the legislature of the respective States in which public lands may be situated; and the said company or companies are hereby authorized to survey and mark through the said public lands, to be held by them for the track of said road, 100 feet in width: Provided, That in case where deep excavation or heavy embankment is required for the grade of such road, then at such places a greater width may be taken by such company, if necessary, not exceeding in the whole 200 feet.

SEC. 2. And be it further enacted, That the said company or companies shall have the right to take from the public lands, in the vicinity of said road or roads, all such materials of earth, stone, or wood, as may be necessary or convenient, from time to time, for the first construction of said road or roads, or any part thereof, through said land.

* * * * * * *

10 STAT. 683, MARCH 3, 1855.

RAILROADS, PLANK ROADS, AND TURNPIKES—AMENDMENT.

AN ACT Extending the provisions of the act of August 4, 1852, entitled "An act to grant the right of way," etc., to the public lands in the Territories of the United States.

Be it enacted, etc., That the provisions of the act entitled "An act to grant the right of way to all rail and plank roads and macadamized turnpikes passing through the public lands belonging to the United States," approved August 4, 1852 (10 Stat. 28), be and the same is hereby extended to all of the public lands of the United States in the Territories of the United States.

18 STAT. 482, MARCH 3, 1875.

RAILROADS THROUGH PUBLIC LANDS.

AN ACT Granting to railroads the right of way through the public lands of the United States.

Be it enacted, etc., That the right of way through the public land of the United States is hereby granted to any railroad company

duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of 100 feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed in amount 20 acres for each station, to the extent of one station for each 10 miles of its road.

A. RAILROAD GRANT.

1. APPROPRIATION AND SELECTION—MINING CLAIMS.
2. MINING CLAIMS SUBJECT TO RIGHT OF WAY.

1. APPROPRIATION AND SELECTION—MINING CLAIMS.

Under this grant a railroad company can not appropriate ground for its station covering land embraced within a prior mineral application.

Montana Central R. Co., In re, 25 L. D. 250.

Gravel beds or ballast pits are not subject to selection under this act.

Grand Island, etc., R. Co., In re, 14 L. D. 414.

2. MINING CLAIMS SUBJECT TO RIGHT OF WAY.

Under this act a railroad company acquires an easement only and subject to which a mineral patent may issue in the absence of other objection, but by virtue of which easement the railroad company may rightfully resist an application for mineral patent upon any sufficient ground.

Grand Canyon R. Co. v. Cameron, 35 L. D. 495, p. 496.

26 STAT. 371, p. 391, AUGUST 30, 1890.

CANALS AND DITCHES.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1891, and for other purposes.

Be it enacted, etc., * * *

No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry, or settlement is validated by this act: Provided, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. * * *

A. RESERVOIR SITES—MINERAL LANDS.

See Settlers' relief acts, 26 Stat. 1095, p. 1221.

Mineral lands are not excepted from the reservoir sites provided for by this act, but a reservoir site can not be located on a valid existing mining claim.

Gabathuler, In re, 15 L. D. 418.

26 STAT. 1095, p. 1101, MARCH 3, 1891.

CANALS AND DITCHES.

AN ACT To repeal the timber-culture laws, and for other purposes.

Be it enacted, etc., * * *

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and 50 feet on each side of the marginal limits thereof; also the right to take, from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: Provided, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

28 STAT. 635, 2 SUPP. R. S. 367, JANUARY 21, 1895.

TRAMROADS, CANALS, AND RESERVOIRS.

AN ACT To permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes.

Be it enacted, etc., That the Secretary of the Interior be, and hereby is, authorized and empowered, under the general regulations to be fixed by him, to permit the use of right of way through the public lands of the United States, not within the limits of any park, forest, military or Indian reservation, for tramroads, canals or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and 50 feet on each side of the marginal limits thereof; or 50 feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

29 STAT. 40, p. 42, MARCH 2, 1896.

FORT SMITH & WESTERN COAL RAILROAD.

AN ACT To grant the Fort Smith & Western Coal Railroad Co. a right of way through the Indian Territory and for other purposes.

Be it enacted, etc., * * *

SEC. 9. That the Fort Smith & Western Coal Railroad Co. shall accept this right of way upon the express condition, binding upon

itself, its successors and assigns, that they will neither aid, advise, or assist toward any effort looking to the changing of or extinguishing the present tenure of the Indians in their lands, and will not attempt to secure from the Indians for the purposes of said railway any further grant of land, or its occupancy, than herein provided, except for the purpose of mining coal: Provided, That any violation of the conditions named in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this act: Provided further, That the entire line of said road shall be surveyed and located and said location approved by the Secretary of the Interior before the work of construction shall commence.

29 STAT. 120, MAY 14, 1896.

TRAMROADS, CANALS, AND RESERVOIRS—ELECTRIC POWER.

AN ACT To amend the act approved March 3, 1891 (26 Stat. 1095) granting the right of way upon the public lands for reservoir and canal purposes.

Be it enacted, etc., That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January 21, 1895 (28 Stat. 635), be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way to the extent of 25 feet, together with the use of necessary ground, not exceeding 40 acres, upon the public lands and forest reservations of the United States, by any citizen or association of citizens of the United States, for the purposes of generating, manufacturing, or distributing electric power."

NOTE.—The reference in the title of this act to the act approved March 3, 1891 (26 Stat. 1095), is evidently an error, as shown in the body of the act. But section 18 of the act of March 3, 1891 (26 Stat. 1095, p. 1101), does grant the right of way through the public lands to canal and ditch companies.

30 STAT. 910, p. 911, FEBRUARY 28, 1899.

PASADENA & MOUNT WILSON RAILROAD—MINERALS RESERVED.

AN ACT To grant to the Pasadena & Mount Wilson Railway Co. right of way and certain lands for railroad purposes through the San Gabriel Forest Reserve.

Be it enacted, etc., * * *

SEC. 2. * * * Also a tract of land consisting of 40 acres at the terminus of said right of way at Mount Lowe: Provided, That all minerals, including coal, in all of said right of way and lands hereby granted are reserved to the United States.

30 STAT. 1214, p. 1233, MARCH 3, 1899.

FOREST RESERVATIONS—RESERVOIR SITES—HIGHWAYS ACROSS.

AN ACT Making appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1899, and for other purposes.

Be it enacted, etc., * * *

That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way

for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interest will not be injuriously affected thereby.

See 2339 R. S., p. 609; 14 Stat. 251, p. 253, sec. 8, p. 633; 28 Stat. 635, 2 Supp. 367, p. 1190.

31 STAT. 790, 2 SUPP. R. S. 1483, FEBRUARY 15, 1901.

PUBLIC LANDS—PERMITS GENERALLY.

AN ACT Relating to rights of way through certain parks, reservations, and other public lands.

Be it enacted, etc., That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or other beneficial uses to the extent of the ground occupied by such canals, ditches, etc., * * * or electrical or other works permitted hereunder, and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permit shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title 65 of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confor any right, or easement, or interest in, to, or over any public land, reservation, or park.

See Act of Jan. 21, 1895, 2, Supp. R. S. 367.
Act of May 11, 1898, 2, Supp. R. S. 751.
Act of Mar. 3, 1899, 2, Supp. R. S. 1002.

33 STAT. 628, FEBRUARY 1, 1905.

FOREST RESERVATIONS—MUNICIPAL AND MINING PURPOSES.

AN ACT Providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture.

Be it enacted, etc., * * *

SEC. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels,

and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

A. RIGHTS OF WAY IN FOREST RESERVES.

1. LIMITATIONS ON USE OF PRIVILEGE.
2. APPLICATION OF ACT TO MINING PROPERTY.

1. LIMITATIONS ON USE OF PRIVILEGE.

This act was evidently drawn in the interest of municipalities and miners, and the limitations upon the use of the privileges granted are such as to warrant especial scrutiny of the purposes of the projectors of the enterprise before giving approval to an application filed under the act.

Northern California Power Co., In re, 37 L. D. 80, p. 81.

The uses to which the right of way granted under this section may be applied are limited to municipal and mining purposes, including the milling and reduction of ore and the right can be enjoyed during the period of their beneficial use.

Northern California Power Co., In re, 37 L. D. 80, p. 81.

2. APPLICATION OF ACT TO MINING PROPERTY.

Where a privilege sought under this act might be used in the operation of mining property, but where it appears that this use would be incidental merely to the real purpose of the projector, the application should be rejected.

Northern California Power Co., In re, 37 L. D. 80, p. 81.

SALINES AND SALT SPRINGS.

1 STAT. 464, p. 466, MAY 18, 1796.

SURVEYOR MUST NOTE MINES, SALT LICKS, AND SALT SPRINGS.

AN ACT Providing for the sale of the lands of the United States, in the territory northwest of the river Ohio, etc.

Be it enacted, etc., * * *

SEC. 2. Be it further enacted, * * * Every surveyor shall note in his field book the true situations of all mines, salt licks, salt springs, and mill sites, which shall come to his knowledge; all watercourses, over which the line he runs shall pass; and also the quality of the lands. * * *

SEC. 3. Be it further enacted, That a salt spring lying upon a creek which empties into the Scioto River, on the east side, together with as many contiguous sections as shall be equal to one township, and every other salt spring which may be discovered, together with the section of one mile square which includes it, and also four sections at the center of each township, containing each one mile square, shall be reserved, for the future disposal of the United States; but there shall be no reservations, except for salt springs, in fractional townships, where the fraction is less than three-fourths of a township.

A. SURVEYOR'S DUTIES.
B. SALINES RESERVED FROM SALE, p. 1195.
C. SALT SPRINGS RESERVED FROM SALE, p. 1195.
D. MINERAL LOCATIONS ON AGRICULTURAL LANDS—EFFECT, p. 1196.

A. SURVEYOR'S DUTIES.

1. LOCATION OF MINES, SALT SPRINGS, ETC., ON FIELD BOOKS.
2. SURVEYOR'S NOTATION OF MINES—EFFECT AS EVIDENCE.

1. LOCATION OF MINES, SALT SPRINGS, ETC., ON FIELD BOOKS.

See Lead mines, p. 1039.
Reservations, p. 1159.
Settlers' relief acts, p. 1215.
State and public grants, p. 1239.

This act requires every surveyor to note in his field book the true situation of all mines, salt licks, salt springs, and mill sites, and return such field books to the surveyor general, who shall cause a plat to be made.

Cole v. Markley, 2 L. D. 847, p. 849.
Winscott v. Northern Pac. R. Co., 17 L. D. 274, p. 276.
Alabama, In re, 21 L. D. 320, p. 321.
Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 484.

By this act every surveyor was required to note in his field book the true situation of all mines, salt licks, salt springs, and mill sites which should come to his knowledge, and all these were reserved for future disposition, and this reservation has been continued by later acts.

New Mexico, In re, 35 L. D. 1, p. 5.

This act requires every surveyor to note in his field book the true situation of all mines and salt licks, and salt springs on these, with a section 1 mile square, were reserved for future disposition.

Hall v. Litchfield, 2 C. L. O. 179.

2. SURVEYOR'S NOTATION OF MINES—EFFECT AS EVIDENCE.

These notations required to be made by the surveyor in his field book are only prima facie evidence of the character of the land and may be rebutted by satisfactory proof that it is in fact of a different character.

Cole v. Markley, 2 L. D. 847, p. 849.
See Robinson v. Forrest, 29 Cal. 321.
Gold Hill Quartz Min. Co. v. Ish, 5 Oreg. 104.

B. SALINES RESERVED FROM SALE.

It has been the policy of the Government since the enactment of this statute to reserve saline lands from disposition under the laws regulating the sale and disposal of the public lands.

Morton v. Nebraska, 88 U. S. 660, p. 667
Cole v. Markley, 2 L. D. 847, p. 848.
Salt Bluff Placer, In re, 7 L D. 549.

Since the inauguration of the land system under this act, it has been the policy of the Government to reserve saline lands from disposition under laws regulating the disposal of the public lands.

Eagle Salt Works In re, 5 C. L. O. 4.

The salines were not hidden as mines but were incrusted with salt so as to resemble snow-covered lakes, and were therefore not subject to preemption.

New Mexico, In re, 35 L. D 1, p. 6.
Morton v. Nebraska, 88 U. S. (21 Wall.), 660, p. 674.

The mere notation of "saline" on the surveyor's plat is immaterial, and no land but that in fact saline is reserved from agricultural entry, and the actual character of land is to be determined by proof

Winscott v. Northern Pac. R. Co., 17 L. D. 274, p. 277.
See Robinson v. Forrest, 29 Cal. 318.
Merrill v. Dixon, 15 Nev. 401.
Morton v. Nebraska, 88 U. S (21 Wall) 660, p. 674.

C. SALT SPRINGS RESERVED FROM SALE.

It is the policy of the Government to reserve salt springs and lands from sale.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 667.
Colorado, In re, 10 L. D. 222, p 224.
Southwestern Min. Co., In re, 14 L. D. 597, p. 599.
Hall v. Litchfield, 2 C. L. O. 179.
Salt Bluff Placer, In re, 7 L. D. 549.
Lease of Mineral Lands, In re, 4 Op. Atty. Gen. 480, p. 484.

The condition of the country, the lack of means of transportation, and the necessities of the pioneers caused Congress to reserve for its own disposal all salt springs and a tract of 640 acres surrounding each, and this policy has been maintained and extended to all the territories successively.

Alabama, In re, 21 L. D. 320, p. 321.

The necessities of the pioneers caused Congress to reserve and retain for disposition all salt springs and one section of land around each spring for the use and benefit of all the people in order that salt might be as free as air and water, and this policy has been steadfastly maintained.

New Mexico, In re, 35 L. D. 1, p. 6.

The phrase "all salt springs within the said Territory and the lands reserved for the use of the same" has had a fixed and definite legislative meaning since the passage of this act.

Alabama, In re, 21 L. D. 320, p. 321.

The salt springs within the tract granted to Colorado were expressly reserved for the future disposal of the United States.

Colorado, In re, 10 L. D. 222, p. 223.

D. MINERAL LOCATIONS ON AGRICULTURAL LANDS—EFFECT.

Where a legal mineral location has been made on land returned as agricultural the slight presumption in favor of the return of the surveyor general is ipso facto overcome, and the burden of proof shifts to the party attacking the mineral location.

Northern Pac. R. Co. v. Marshall, 17 L. D. 545, p. 546.
See McQuiddy v. California, 29 L. D. 181.

1 STAT. 490, JUNE 1, 1796.

SURVEYS AND RESERVATIONS.

AN ACT Regulating the grants of land appropriated for military services, and for the Society of the United Brethren, etc.

Be it enacted, etc., That the surveyor general be, and he is hereby required, to cause to be surveyed, the tract of land beginning * * * and that the lands above described, except the salt springs therein, and the same quantities of land adjacent thereto, as are directed to be reserved with the salt springs, in the said recited act, and such tracts within the boundaries of the same, as have been heretofore appropriated by Congress, be, and they are hereby, set apart and reserved for the purposes hereinafter mentioned.

2 STAT. 73, MAY 10, 1800.

RESERVED FROM SALE OF PUBLIC LANDS.

AN ACT To amend the act intituled "An act providing for the sale of the lands of the United States, in the territory northwest of the Ohio, and above the mouth of the Kentucky River. (1 Stat. 464).

Be it enacted, etc., That for the disposal of the lands of the United States, directed to be sold by the act intituled, "An act providing for the sale of the lands of the United States, in the territory northwest of the Ohio, and above the mouth of the Kentucky River," there shall be four land offices established in the said territory: * * *

SEC. 4. And be it further enacted, That the lands thus subdivided (excluding the sections reserved by the above-mentioned act) shall be offered for sale in sections and half sections, subdivided as before directed at the following places and times, that is to say: * * *

SEC. 15. And be it further enacted, That the lands of the United States reserved for future disposition, may be let upon leases by the surveyor general, in sections or half sections, for terms not exceeding seven years, on condition of making such improvements as he shall deem reasonable. * * *

A. SALT SPRINGS AND SALINES.

1. RESERVATIONS CONTINUED.
2. LEASING PROVISIONS INCLUDE LEAD MINES AND SALT SPRINGS.

1. RESERVATIONS CONTINUED.

This act continues the reservation provided for by the act of May 18, 1796 (1 Stat. 464), and authorizes sales to be made of the public lands by the register and receiver, excluding the sections reserved by the former act.

Hall v. Litchfield, 2 C. L. O. 179.

This section (4) excludes from sale the lands reserved by the act of 1796.

Southwestern Min. Co., In re, 14 L. D. 597, p. 599.

This act recognizes the reservation from sale of salt springs.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 488.

2. LEASING PROVISIONS INCLUDE LEAD MINES AND SALT SPRINGS.

The provision reserving for future disposition and leasing in this section (15) includes lead mines or salt springs.

Lease of Mineral Lands, In re, 4 Op. Atty. Gen. 480, p. 484.

2 STAT. 235, MARCH 3, 1803.

WORKING SALT SPRINGS—WABASH RIVER.

AN ACT Concerning the salt springs on the Wabash River.

Be it enacted, etc., That for the purpose of procuring articles necessary to the establishment of salt works at the springs near the Wabash River, which have been ceded to the United States, by certain Indian tribes, the sum of $3,000 be, and the same is hereby appropriated, to be paid out of any unappropriated money in the Treasury and under the direction of the President of the United States, who is hereby authorized to cause the said springs to be worked at the expense of the United States; or, if he shall deem it more proper, to lease the same for a term not exceeding three years, on such conditions as will insure the working the same most extensively, and to the most advantage to the United States.

2 STAT. 445, MARCH 3, 1807.

WORKING SALT SPRINGS AND LEAD MINES PROHIBITED—LEASE FOR WORKING.

AN ACT To prevent settlements being made on lands ceded to the United States.

Be it enacted, etc., That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States, by any treaty made with a foreign nation, or by a cession from any State to the United States, which land shall not have been previously sold, ceded, or leased by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognized and confirmed by the United States * * *, such offender or offenders, shall for-

feit all his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be to the lands aforesaid. * * *

SEC. 2. And be it further enacted, etc., That any person or persons who, before the passing of this act, had taken possession of, occupied, or made a settlement on any lands ceded or secured to the United States, * * * may at any time prior to the 1st day of January next, apply to the proper register or recorder * * *, stating the tract or tracts of land thus occupied, settled, and inhabited by such applicant or applicants, and requesting permission to continue thereon * * * and provided also that in all cases where the tract of land applied for, includes either a lead mine or salt spring, no permission to work the same shall be granted without the approbation of the President of the United States, who is hereby authorized to cause such mines or springs to be leased for a term not exceeding three years, and on such conditions as he shall think proper.

A. LEASING LEAD MINES—TERM.

See 2 Stat. 448, p. 1243.

The only difference between this chapter and chapter 49 is that under the former leases for lead mines are limited to three years and under the latter to five years.

Lead Mines, In re, 2 Op. Atty. Genl. 708.

This section, taken in connection with all the provisions of the laws in relation to mines and salines from the ordinance of 1785 and the act of 1796, clearly vests in the President a general authority to lease lead mines.

Lease of Lead Mines, In re, 4 Op. Atty. Genl. 93.

3 STAT. 211, FEBRUARY 17, 1815.

LEAD MINES AND SALT SPRINGS EXCEPTED FROM LIEU LANDS.

AN ACT For the relief of the inhabitants of the county of New Madrid, Missouri, who suffered by earthquakes.

Be it enacted, etc., That any person or persons owning lands in the county of New Madrid, in the Missouri Territory, with the extent the said county had on the 10th day of November, 1812, and whose lands have been materially injured by earthquakes, shall be, and they hereby are, authorized to locate the like quantity of land on any of the public lands of the said Territory, the sale of which is authorized by law: Provided, That no person shall be permitted to locate a greater quantity of land under this act, than the quantity confirmed to him, except the owners of lots of ground or tracts of land of less quantity than 160 acres, who are hereby authorized to locate and obtain any quantity of land not exceeding 160 acres, nor shall any person be entitled to locate more than 640 acres, nor shall any such location include any lead mine or salt spring. * * *

A. NEW MADRID CERTIFICATE—RIGHTS OF HOLDER.

On proper showing the recorder of New Madrid County issued a certificate to a person whose land was materially injured or destroyed by the earthquakes, and the holder of any such certificate, called New Madrid certificate, was authorized to use such certificate for the location of a tract of land equal in size or not exceeding 160 acres on

any public land subject to sale, lands containing salines and lead mines excepted; and at the same time the title to the land so injured or destroyed reverted to the United States.

Stoddard v. Chambers, 43 U. S. (2 How.) 284, p. 317.
Barry v. Gamble, 44 U. S. 32, p. 53.
Mackay v. Easton, 86 U. S. (19 Wall.) 619, p. 633.
Hot Springs Cases, In re, 92 U. S. 698, p. 712.
See Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 668.
Cady v. Eighmey, 54 Iowa 615, p. 618.

3 STAT. 256, MARCH 5, 1816.

BOUNTIES TO CANADIAN VOLUNTEERS.

AN ACT Granting bounties in land and extra pay to certain Canadian volunteers.

Be it enacted, etc., That all such persons as had been citizens of the United States anterior to the late war, and were at its commencement inhabitants of the Province of Canada, and who, during the said war, joined the armies of the United States as volunteers, and were slain, died in service, or continued therein till honourably discharged, shall be entitled to the following quantities of land, respectively. * * * And it shall be lawful for the said persons to locate their claims in quarter sections, upon any of the unappropriated lands of the United States, within the Indiana Territory, which shall have been surveyed prior to such location, with the exception of salt springs, and lead mines therein, and of the quantities of land adjacent thereto, which may be reserved for the use of the same, by the President of the United States. * * *

A. SALT SPRINGS AND LEAD MINES EXEMPTED.

The bounty lands granted by this act exempts from location salt springs and lead mines and the quantities of land adjacent thereto which may be reserved by the President.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 488.

3 STAT. 296, APRIL 24, 1816.

LEASE OF SALINES ON WABASH RIVER.

AN ACT Authorizing the President to lease the saline near the Wabash River.

Be it enacted, etc., That the President of the United States be, and he is hereby, authorized to lease the United States saline near the Wabash River for a term not exceeding 7 years from and after the end of the present term, on such conditions as will insure the working the same most extensively and most advantageously to the United States.

4 STAT. 451, MARCH 2, 1831.

SALT SPRINGS RESERVED—ILLINOIS.

AN ACT For the sale of the lands in Illinois reserved for the use of the salt springs on the Vermilion River.

Be it enacted, etc., That the State of Illinois shall be, and is hereby, authorized and empowered to cause to be sold and conveyed, in such manner and on such terms and conditions as the legislature

of said State has or may direct, the whole or any part of the lands reserved and set apart by the President of the United States, on the 29th day of March, 1825, for the use of the salt works on the Vermilion River, in said State, and to apply the proceeds of such sale to such objects as the legislature of said State has or may direct.

4 STAT. 505, APRIL 20, 1832.

LEASE OF SALT SPRINGS—ARKANSAS.

AN ACT Authorizing the governor of the Territory of Arkansas to lease salt springs.

Be it enacted, etc., That the salt springs lying on the Washita River, on Little River, and on Saline Creek, in said Territory of Arkansas, together with as many contiguous sections to each of said springs as shall be equal to one township, and every other salt spring which may be discovered in said Territory, with the section of one mile square which includes it, shall be reserved for the future disposal of the United States, and shall not be liable to be entered, located, or appropriated for any other purpose whatever.

SEC. 2. And be it further enacted, That the governor of said Territory shall be, and is hereby, authorized to let out or lease said springs, for a term not exceeding five years; and the rents and profits arising from said springs shall be applied, by the legislature of said Territory, to the opening and improving such roads in said Territory, as said legislature may direct, and to no other purpose whatsoever.

SEC. 3. And be it further enacted, That the hot springs in said Territory, together with four sections of land including said springs, as near the center thereof as may be, shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated, for any other purpose whatever.

A. SALT SPRINGS IN ARKANSAS—LEASING.

By this act the governor of the Territory of Arkansas is authorized to lease the salt springs in that Territory.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 488.

5 STAT. 453, SEPTEMBER 4, 1841.

SALINES AND MINES EXCEPTED FROM PREEMPTION RIGHTS.

AN ACT To appropriate the proceeds of the sales of the public lands, and to grant preemption rights.

Be it enacted, etc. * * * (p. 455).

SEC. 10. And be it further enacted, * * *. No lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami Tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot Tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improve-

ment; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. * * *

A. CONSTRUCTION AND PURPOSE OF ACT.
B. MINERAL AND SALINE LAWS.
C. STATE SELECTIONS—WHAT CONSTITUTES.

A. CONSTRUCTION AND PURPOSE OF ACT.

See 13 Stat. 47, p. 1272.

This act, providing that no preemption entry should be made on land on which are situated any known salines or mines, was the first enactment making any reference to minerals on the public land.

Mullan v. United States, 118 U. S. 271, p. 277.

This was the first act making any distinction between mineral and agricultural lands, and it contains the regulations as to the manner of entering public lands and disposing of them by private sale, but expressly reserves from preemption, lands known as salines or mines, but does not repeal the enabling act for Alabama or affect the right of the State to the 16th section or to the lieu lands.

Alabama, In re, 6 L. D. 493, p. 497.

This act relating to the precious metals or minerals in public lands continued with its limitations and restrictions until Congress passed a general act introducing a new method of disposition of mineral lands.

Alabama, In re, 6 L. D. 493, p. 500.

B. MINERAL AND SALINE LAWS.

1. MEANING AND APPLICATION.
2. RESERVATION.
3. SALINES EXCEPTED FROM SALE OR PREEMPTION.
4. MINERAL SPRINGS NOT EXCEPTED.
5. SUBSEQUENT DISCOVERIES—EFFECT.

1. MEANING AND APPLICATION.

Saline lands are mineral lands.

Garrard v. Silver Peak Mines, 94 Fed. 983, p. 989.
See Morton v. Nebraska, 88 U. S. (21 Wall.) 660.
Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326.

Salt mines of rock salt, mineral springs, salt springs, salt beds, and salt rock all come within the meaning of the general term "salines."

Southwestern Min. Co., In re, 14 L. D. 597, p. 603.

The term "mineral lands" is one of broader significance than the words "lands on which are situated any known salines or mines" and the former refers to a class of lands rather than specific tracts easily ascertainable not only by the Land Department but by the applicants themselves.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 254.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20.

The term "salines," as used by Congress, includes not only salt springs but all salt lands of every character, and Congress extended the provisions of the earlier acts so as to conform the statute to meet the condition of the country in respect to salt in the light of the discovery of salty formations in Nebraska, Kansas, and elsewhere.

Southwestern Min. Co., In re, 14 L. D. 597, p. 600.

2. RESERVATION.

All saline lands are reserved from sale whether marked on the plat of the surveyor general as such or not.

Morton v. Nebraska, 88 U. S. 660.
Cole v. Markley, 2 L. D. 847, p. 851.
See Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 222.

Under the settled policy of the Government to reserve salt lands and salines from settlement or entry as mineral lands deposits of rock salt are not subject to entry as mineral lands.

Southwestern Min. Co., In re, 14 L. D. 597.

This statute, providing for the entry and purchase of vacant public lands, expressly excepted known salines or mines and does not necessarily except salt springs and minerals of the metallic class only.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 237.

This section is intended to be read and construed in connection with the general reservation of mineral lands contained in the mining statutes which declare that lands valuable for minerals shall be reserved from sale except as provided by law.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.

There are no coal lands as such mentioned in the act of 1841, hence coal lands have by legislative definition of the term "mines" been excluded from sale or selection otherwise than as provided in the statute, and coal lands are included in the term "mineral lands."

United States v. Mullan, 10 Fed. 785, p. 789.

3. SALINES EXCEPTED FROM SALE OR PREEMPTION.

This statute and 10 Stat. 244 and 12 Stat. 409 all reserve from sale or preemption lands containing minerals or upon which are situated any known salines.

Deffeback v. Hawke, 115 U. S. 392, p. 402.
United States v. Mullan, 10 Fed. 785, p. 787.
Alabama, In re, 6 L. D. 493, p. 497.
Southwestern Min. Co., In re, 14 L. D. 597, p. 599.
Schofield Patent, In re, Copp's Min. Dec. 17.

This statute applies only to any known salines or mines and these are not subject to preemption, and in this respect the statute differs from other statutes reserving salt springs and salines.

Morton v. Nebraska, 88 U. S. 660, p. 674.
See Deffeback v. Hawke, 115 U. S. 392, p. 401.
United States v. San Pedro, etc., Co., 4 N. Mex. 225, p. 294.

The statute of 1841 expressly excludes from preemption or sale all lands containing any known mines, and there is no jurisdiction or power in any officer of the Government to grant such lands.

United States v. Mullan, 10 Fed. 785, p. 788.

A desert land entry will not be allowed of land on the margin of the Great Salt Lake and which are not susceptiole of reclamation and are chiefly valuable for the saline deposits.

Jeremy v. Thompson, 20 L. D. 299.

A patent issued for lands on which there are situated known salines or mines, under the provisions of this statute, is void.

Morton v. Nebraska, 88 U. S. 660, p. 674.
See Garrard v. Silver Peak Mines, 82 Fed. 578, p. 588.
Hermocilla v. Hubbell, 89 Cal. 5.

4. MINERAL SPRINGS NOT EXCEPTED.

Lands containing mineral springs not of a saline character are subject to sale under the general laws and not under the acts relating to the sale of mineral lands.

Pagosa Springs, In re, 1 L. D. 562.

5. SUBSEQUENT DISCOVERIES—EFFECT.

Any change in the conditions occurring subsequently to the sale whereby discoveries of salines or mines are made upon the land can not affect the title as it passed at the time of the sale.

Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.
Deffeback v. Hawke, 115 U. S. 392, p. 411.
Miner, In re, 9 L. D. 408, p. 411.

C. STATE SELECTIONS—WHAT CONSTITUTES.

The making of a selection of lands by a State under this act and placing it on the files of the Land Office, though not signed by the register, is prima facie a filing, and if approved the title vests in the State from the date of such filing.

Ison v. Nelson Min. Co., 47 Fed. 199.
Brigham City v. Rich, 34 Utah 130, p. 141.

5 STAT. 507, AUGUST 16, 1842.

SALINES AND SALT SPRINGS EXCEPTED FROM PREEMPTION RIGHTS—IOWA.

AN ACT To grant preemption rights to settlers on the Dubuque claim "in the Territory of Iowa."

Be it enacted, etc., That the lands lying in the county of Dubuque, in the Territory of Iowa, heretofore reserved for the Dubuque claim, so called, which have not been sold by the United States, by virtue of the acts of July 4, 1836, and March 3, 1837, be, and the same are hereby, declared to be public lands, and that settlers on said land, who but for said reservation would have been enabled to enter the same under the preemption laws of June 19, 1834, June 22, 1838, June 1, 1840, or September 4, 1841, be, and they are hereby, authorized to enter the same at $1.25 per acre, at any time within one year after the date of this act, upon complying with the provisions of either of said acts under which such person may claim; the settlers under the earlier law being entitled to the preference over those under a subsequent one: Provided, That this section is not to be regarded as extending the right of preemption to lands reserved for lead mines, salt springs, school sections, or town lots: And provided further, That should the said claim of Dubuque hereafter prove valid, compensation to the claimants shall be made by the United States in other public lands equal in quantity, subject to private entry.

6 STAT. 161, APRIL 16, 1818.

SALE OF SALT SPRINGS—OHIO.

AN ACT To authorize the Legislature of Ohio to sell certain land, etc.

Be it enacted, etc., That the Legislature of the State of Ohio shall be, and are hereby authorized and empowered to cause to be selected and sold, in such manner, and on such terms and conditions as they may by law direct, any one section not exceeding the quantity of 640 acres, of the tract of land of 6 miles square, reserved for the benefit of that State, at the Sciota salt springs: Provided, That the section so selected shall not include the said salt springs, and that the money arising from the sale of the aforesaid section shall be applied to the erection of a courthouse, or other public buildings, thereon, for the use of the county of Jackson, in said State. * * *

6 STAT. 779, MARCH 3, 1839.

SALE OF SALT LICK RESERVATION—TENNESSEE.

AN ACT For the relief of certain settlers, living on what is called the Salt Lick Reservation, etc.

Be it enacted, etc., That the State of Tennessee be, and she is hereby, authorized to issue grants, and perfect titles, to the vacant and unappropriated land in the western district of Tennessee, which lies within a tract of land of 4 miles square upon both sides of Sandy River, commonly called the Salt Lick Reservation, and which is described in the fourth article of the treaty of Old Town, concluded October 19, 1818, between the United States and the Chickasaw Nation of Indians, etc.

9 STAT. 181, MARCH 3, 1847.

SALE OF SALT SPRINGS—ARKANSAS, ILLINOIS, AND MICHIGAN.

AN ACT To give the consent of Congress to the sale of certain salt spring lands heretofore granted to Michigan, Illinois, and Arkansas.

Be it enacted, etc., That the State of Michigan shall be, and hereby is, authorized and empowered to sell, in such manner as the legislature of said State shall by law direct, the salt spring lands granted to said State for its use, by an act entitled "An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions,'" approved June 23, 1836.

SEC. 2. That the State of Illinois shall be, and hereby is, authorized and empowered to sell, in such manner as the legislature of said State shall by law direct, the whole or any part of the saline lands lying in Jackson County in said State, which were granted to the State of Illinois, by virtue of "An act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," approved April 18, 1818.

SEC. 3. That the State of Arkansas shall be, and hereby is, authorized to sell, in such manner as the legislature of said State shall by law direct, the whole or any part of the saline lands, granted to said

State by virtue of an act supplementary to the act entitled "An act for the admission of the State of Arkansas into the Union and to provide for the due execution of the laws of the United States within the same, and for other purposes," approved June 23, 1836.

NOTE.—The sales authorized by this act were confirmed to the State of Michigan by the act of August 25, 1852 (10 Stat, 30), otherwise unimportant.

10 STAT. 15, JULY 12, 1852.

SALE OF SALINE LANDS—INDIANA.

AN ACT To enable the Legislature of Indiana to dispose of unsold saline lands.

Be it enacted, etc., That so much of the act of Congress entitled "An act to authorize the Legislature of the State of Indiana to sell and convey certain lands granted to said State for the use of the people thereof," approved July 3, 1832, as provides that said lands shall not be sold for less price than (that) at which the public lands are sold, be, and the same is, hereby repealed.

10 STAT. 308, JULY 22, 1854.

MINERAL LANDS AND SALINES RESERVED—KANSAS, NEBRASKA, AND NEW MEXICO.

AN ACT To establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, etc.

Be it enacted, etc., That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a surveyor general for New Mexico, * * *.

SEC. 4. And be it further enacted, That none of the provisions of this act shall extend to the mineral or school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, etc.

SEC. 8. And be it further enacted, That it shall be the duty of the surveyor general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of 1848, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of 1848 between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be

reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act.

SEC. 9. And be it further enacted, That full power and authority are hereby given the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of this act.

A. CONSTRUCTION AND PURPOSE.
B. MINERAL LANDS NOT SUBJECT TO PREEMPTION OR SETTLEMENT, p. 1207.
C. GRANT TO KANSAS AND NEBRASKA, p. 1207.
D. SURVEYOR GENERAL—DUTIES, p. 1208.

A. CONSTRUCTION AND PURPOSE.

1. POLICY AS TO MINERALS AND SALINES.
2. MINERAL, SALINE, AND SCHOOL LANDS EXCEPTED.

1. POLICY AS TO MINERALS AND SALINES.

This statute was simply a declaration of the policy of the Government to reserve its saline deposits, and a valid entry could not be made of lands containing such salines where the saline deposits had been noted on the field books and were plainly visible.

Morton v. Nebraska, 88 U. S. 660, p. 669.
See Scofield, In re (Cunningham Claims), 41 L. D. 176, p. 222.
Salt Bluff Placer, In re, 15 C. L. O. 244, p. 245.

The intention of Congress as to saline reservations is to be found in the unbroken line of policy from 1795 to the date of this act.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 671.

It can not be assumed, without an express declaration to that effect, that Congress intended by this act to permit the sale of salines in the Territories soon to be organized into States, and thus subvert a long-established policy by which it had been governed in similar cases.

Morton v. Nebraska, 88 U. S. 660, p. 671.
Southwestern Min. Co., In re, 14 L. D. 597, p. 600.
Salt Bluff Placer, In re, 15 C. L. O. 244, p. 245.

An intention to abandon a policy in reference to the reservation of saline prior to the date of this act, can not be imputed to Congress unless the act admits of no other construction.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 669.

Congress was so particular not to depart from its policy in reserving salines, salt springs, and lead mines that in giving lands to the sufferers of the New Madrid earthquakes every lead mine and salt spring were excluded from location (3 Stat. 211).

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 668.

The purpose of the proviso is to be found in the situation of the country embraced in the Louisiana purchase, and Congress thought proper in granting the salt springs to the State to say that no salt spring the right whereof now is or shall be confirmed or adjudged to any individual shall pass to the State, and the purpose Congress had in view is to be found in the unbroken line of policy in reference to saline reservations, and to perpetuate this policy and apply equally to all the lands in Kansas, Nebraska, and New Mexico, as authorized by this act.

Hall v. Litchfield, 2 C. L. O. 178.
See Hall v. Litchfield, 3 C. L. O. 196.

2. MINERAL, SALINE, AND SCHOOL LANDS EXCEPTED.

This section expressly declares that none of the provisions of the act extend to mineral, school lands, or salines.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 670.

This act, providing for the disposition of public lands, expressly states that none of the provisions of the act shall extend to mineral or school lands, salines, military or other reservations.

Southwestern Min. Co., In re, 14 L. D. 597, p. 599.

Lands of a saline character are expressly provided for in the laws relating to the disposition of the public lands.

Pagosa Springs, In re, 1 L. D. 562.

The fact that section 4 of this act did reserve salines from sale is evidenced by the act of March 3, 1857 (11 Stat. 186), rearranging the land districts in Nebraska, and expressly excepting from sale such lands "as may have been reserved."

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 671.

The lands included in the treaty with Mexico vesting the title in private persons are reserved both from sale and from exploration and location by mineral claimants.

Mandeville, In re, 8 C. L. O. 107.
See Lockhart v. Johnson, 181 U. S. 516, p. 521.

B. MINERAL LANDS NOT SUBJECT TO PREEMPTION OR SETTLEMENT.

Mineral lands are not subject to preemption or private entry, but are reserved for sale in accordance with mining acts.

Nerce Valley, In re, Copp's Min. Lands 187.

Sioux half-breed script can not be located on mineral lands.

Nerce Valley, In re, Copp's Min. Lands 187.

The fact that lands claimed under this act contain minerals would disprove the correctness of a location of a grant of agricultural and grazing lands, as these were not locatable upon mineral lands and mineral lands did not pass under the grant.

Tumacacori and Calabazas Claim, In re, 16 C. L. O. 15, p. 16.
See 16 L. D. 408.

The donations to settlers contemplated by this act did not extend to mineral and other lands reserved from settlement.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 305.

C. GRANT TO KANSAS AND NEBRASKA.

1. SALINES EXCEPTED.

This act leaves no doubt of the intention of Congress to extend to the territory embraced by the States of Kansas and Nebraska the same system that had been applied to the rest of the Louisiana purchase under the act of March 3, 1811 (2 Stat. 662).

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 669.

The Nebraska enabling act, April 10, 1864 (13 Stat. 47), is further evidence that this act was intended to reserve salines.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 671.

D. SURVEYOR GENERAL—DUTIES.

See p. 849.

Congress did not by this act and by imposing certain duties upon the surveyor general intend to create an independent tribunal outside of and apart from the General Land Department; and while the surveyor general was not authorized to act in defiance or independently of the Land Department, he was charged with the duty of making a survey and location, and it was for him to say in the first instance whether the lands selected and by him surveyed and located were lands vacant and nonmineral.

Shaw v. Kellogg, 170 U. S. 312, p. 333.
Baca Float No. 3, In re, 30 L. D. 497, p. 502.
See Baca Float No. 3, In re, 29 L. D. 44.

It was made the duty of the surveyor general to examine the various claims to lands arising under the laws, usages, and customs of Spain and Mexico, and he was the officer who, by virtue of his duties, was most competent to examine and pass upon the question of the character of the land selected.

Shaw v. Kellogg, 170 U. S. 312, p. 333.
Baca Float No. 3, In re, 30 L. D. 497, p. 502.
See Baca Float No. 3, In re, 29 L. D. 44.

Under authority of this act the Commissioner of the General Land Office instructed the surveyor general of New Mexico to collect information in reference to the laws of the country as to minerals and ascertain what conditions were attached to grants of land embracing mines and to require testimony as to whether the tracts claimed were mineral or agricultural.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 305.
See Lockhart v. Wills, 9 N. Mex. 344, p. 349.

The surveyor general's office of New Mexico was not established to convey the gold and silver mines belonging to the General Government or even to recommend their conveyance.

United States v. San Pedro & Canon del Agua Co., 4 N. Mex. 225, p. 299.

Congress first established a reservation of lands embraced within this grant on the report of the surveyor general and afterwards repealed the reservation and the section authorizing it and provided for compensating any grant claimant for any lands which the Government may have elected to sell and dispose of within the boundaries of the grant.

Lockhart v. Wills, 9 N. Mex. 344, p. 351.

Congress by this and the act of March 1, 1861 (12 Stat. 887), intended to confirm to the claimant the quantity of 16 square leagues described as "4 leagues square, the mine being in the center, and the boundaries running to the cardinal points and containing 16 square leagues."

Ortez Mine Grant, In re, 3 C. L. O. 23, p. 27.
See Lockhart v. Johnson, 181 U. S. 516, p. 521.

11 STAT. 186, MARCH 3, 1857.

SALE OF PUBLIC LANDS—NEBRASKA—SALINES AND SALT SPRINGS EXCEPTED.

AN ACT To establish three additional land districts in the Territory of Nebraska.

Be it enacted, etc., That all that portion of the Territory of Nebraska at present included in the Omaha district, which lies south of the line which divides townships 6 and 7 north, extended from the Missouri River westward, shall constitute an additional district, to be called the "Nemaha land district"; all said Omaha district

which is situated south of the south shore or right bank of the Platte River, and north of the said township line, between townships 6 and 7 north, shall constitute an additional land district, to be called the "South Platte River land district"; and all that portion of said Omaha district which lies north of the south boundary of the "Omaha Reserve," extended westward, being identical with the line which divides townships 23 and 24 north, shall constitute an additional land district, to be called the "Dahkota land district."

* * * * * * *

SEC. 3. And be it further enacted, That the President is hereby authorized to cause the public lands in said districts, with the exception of such as may have been or may be reserved for other purposes, to be exposed to sale in the same manner and upon the same terms and conditions as other public lands of the United States. * * *

A. SALINES RESERVED FROM SALE.

This act is regarded as an additional evidence of the intention of Congress to reserve from sale saline lands according to the provisions of the act of July 22, 1854 (10 Stat. 308).

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 671.

19 STAT. 221, JANUARY 12, 1877.

SALE OF SALINE LANDS.

AN ACT Providing for the sale of saline lands.

Be it enacted, etc., That whenever it shall be made appear to the register and receiver of any land office of the United States that any lands within their district are saline in character, it shall be the duty of said register and said receiver, under the regulations of the General Land Office, to take testimony in reference to such lands to ascertain their true character, and to report the same to the General Land Office; and if, upon such testimony, the Commissioner of the General Land Office shall find that such lands are saline and incapable of being purchased under any of the laws of the United States relative to the public domain, then, and in such case, such lands shall be offered for sale by public auction at the local land office of the district in which the same shall be situated, under such regulations as shall be prescribed by the Commissioner of the General Land Office, and sold to the highest bidder for cash, at a price at not less than $1.25 per acre; and in case said lands fail to sell when so offered, then the same shall be subject to private sale, at such land office for cash, at a price not less than $1.25 per acre, in the same manner as other lands of the United States are sold: Provided, That the foregoing enactments shall not apply to any State or Territory which has not had a grant of salines by act of Congress, nor to any State which may have had such a grant, until either the grant has been fully satisfied, or the right of selection thereunder has expired by efflux of time. But nothing in this act shall authorize the sale or conveyance of any title other than such as the United States has, and the patents issued shall be in the form of a release and quitclaim of all title of the United States in such lands.

* * * * * * *

See 2329 R. S., p. 507; 31 Stat. 745, 2 Supp. 1465, p. 1213.

A. SALINE AND SALT LANDS.

1. CONSTRUCTION OF ACT.
2. PROVISIONS FOR DISPOSAL.
3. POLICY OF GOVERNMENT AS SHOWN BY ACT.
4. MEANING AND APPLICATION OF TERM.
5. PROVISO OF ACT—APPLICATION TO STATES.
6. RESERVATION FROM AGRICULTURAL ENTRY.
7. SALE—METHOD AND TERMS.
8. HEARING TO DETERMINE.

1. CONSTRUCTION OF ACT.

This act does not repeal or otherwise affect the act of February, 1859 (11 Stat. 334), and the two acts should stand together, each having a separate field in which to operate and providing different methods of acquiring title to saline lands

Oregon v. Jones, 24 L. D. 116, p. 118.

2. PROVISIONS FOR DISPOSAL.

No authority exists for the disposal of saline lands or salt springs belonging to the United States except under this act, and it has been the policy of the Government from the earliest dates to reserve all salines and to dispose of them only by special acts of Congress.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.
New Mexico, In re, 35 L. D. 1, p. 6.
See Salt Bluff Placer, In re, 7 L. D. 549.

With the exception of the act of March 3, 1829 (4 Stat. 364), this act was the first to make provision for the general disposition and marks the departure from the Government policy of reserving from sale all lands containing salt springs and deposits.

New Mexico, In re, 35 L. D. 1, p. 4.
See Morton v. Nebraska, 88 U. S. 660.

This act created an exception as to the method of disposing of saline lands.

New Mexico, In re, 31 L. D. 389, p. 390.
Morton v. Nebraska, 88 U. S. (21 Wall.), 660.
Salt Bluff Placer, In re, 7 L. D. 549.
Southwestern Min. Co., In re, 14 L. D. 597.

Lands chiefly valuable for their salt deposits are not subject to placer entry, but authority for their disposal exists only under the provisions of this act.

New Mexico, In re, 35 L. D. 1, p. 6.
See Salt Bluff Placer, In re, 7 L. D. 549, p. 552.

At the time of the passage of this act the general mining laws had been in force for nearly five years, and while salt belongs to the mineral kingdom, yet Congress made no specific provision for the sale of lands which were saline in character.

New Mexico, In re, 35 L. D. 1, p. 6.

This act is the only authority for the disposal of saline lands or salt springs belonging to the United States, and the policy of the Government has been to reserve all salines and to dispose of them by specific acts of Congress.

Salt Bluff Placer, In re, 7 L. D. 549.

Prior to the passage of this act the Land Department had no authority to dispose of salt lands or salines either as agricultural or mineral lands.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.
Hall v. Litchfield, 2 C. L. O. 179.
See Salt Bluff Placer, In re, 7 L. D. 549.
Morton v. Nebraska, 88 U. S. 660.

This act does not make all salt lands subject to its provisions, but only when it shall be made to appear to certain officers that lands are saline in character, a sale shall be had, but if a selection has been made by a State under other statutes before the character of the lands have been shown there can be no sale.

Colorado, In re, 10 L. D. 222, p. 228.

3. POLICY OF GOVERNMENT AS SHOWN BY ACT.

At the time of the enactment of this statute Congress did not consider saline lands as subject to sale or entry or as capable of being purchased under any laws of the United States relative to the public domain, and the act is a recognition on the part of Congress of the policy of the Government in relation to the reservation of saline lands.

Salt Bluff Placer, In re, 7 L. D. 549, p. 552.

This statute indicates a change to some extent in the policy of the Government in dealing with salt springs and lands that are saline in character.

Colorado, In re, 10 L. D. 222, p. 227.

4. MEANING AND APPLICATION OF TERM.

All mineral springs, salt springs, salt beds, and salt rock are covered by the general term salines.

New Mexico, In re, 35 L. D. 1, p. 3.
See Southwestern Min. Co., In re, 14 L. D. 597, p. 603.

Congress did not mean by the proviso to this act to apply the term "salines" to any other character of substance than that which had been made the subject of grant to other States.

New Mexico, In re, 35 L. D. 1, p. 5.

A salt lick is a spot where the earth is impregnated with common salt and is licked by the tongues of animals, wild and domestic, and these licks afford these animals the salt necessary to their nutrition, and so the salt springs more easily and readily yielded to the pioneers of the public domain the same commodity equally essential to their health and comfort, and it was these reserved salt springs which were granted to the several States, and to these grants the proviso of this act refers by the use of the term salines.

New Mexico, In re, 35 L. D. 1, p. 5.

The term saline, as used in this act, can not be held to include all lands containing in their soils or in their waters the salts of sodium potassium, including chlorides, carbonates, and sulphates of these, and the other so-called alkaline earths, nor can it be held to include the associated gypsum minerals.

New Mexico, In re, 35 L. D. 1, p. 8.

5. PROVISO OF ACT—APPLICATION TO STATES.

The proviso of this act should not apply to any State which may have had such a grant until either the grant has been fully satisfied or the right of selection has expired by efflux of time, but this does not limit the time to the period stated in the statute giving the State time within which to make its selection, and the State may make its selection after the expiration of the time stated in the statute.

Colorado, In re, 10 L. D. 222, p. 228.

This act provides for the sale of salt lands in States having a grant to such lands, and the grant has been satisfied or the right of selection expired; but States which had no such grant and States which had received such grants and were still entitled to make such selections are excepted from the operation of the act.

Utah Salt Lands, In re, 13 C. L. O. 53.

This act does not apply to lands in the State of Nevada, as it expressly provides that its provisions shall not apply to any State or Territory which has not had a grant of salines by act of Congress, and no grant of saline lands has been made to Nevada.

Eagle Salt Works, In re, 5 C. L. O. 4.

There is no law authorizing the disposal of saline lands except this act, but this is not applicable to Oklahoma.

Geissler, In re, 27 L. D. 515.
Oklahoma v. Brooks, 29 L. D. 533, p. 535.

This act does not apply to the Territory of Utah, and there is no authority for the disposal of salt lands and salines within that Territory.

Southwestern Min. Co., In re, 14 L. D. 597, p. 598.
Salt Bluff Placer, In re, 7 L. D. 549, p. 552.

6. RESERVATION FROM AGRICULTURAL ENTRY.

This act strengthens the view that a mere notation of saline on the plat or its omission is immaterial, and that no land but that which is in fact saline is reserved from agricultural entry.

Cole v. Markley, 2 L. D. 847, p. 851.
Indiana v. Miller, 13 Fed Cas. 25.
Horton, In re, 9 C. L. O. 121.

7. SALE—METHOD AND TERMS.

This act provides a mode of proceeding by which public lands indicated by the field notes of survey or otherwise, to be saline in character, may be rendered subject to disposal.

Salt Bluff Placer, In re, 7 L. D. 549.

This act requires sales of saline lands to be for cash to the highest bidder at public auction at not less than $1.25 per acre, and if they fail to sell when so offered they are then subject to private sale at not less than the same price and in the same manner as other public lands sold.

Horton, In re, 9 C. L. O. 121, p. 122.

8. HEARING TO DETERMINE.

This act contemplates an investigation to determine whether lands returned as saline are in fact agricultural and not saline.

Horton, In re, 9 C. L. O. 121, p. 122.

This act makes it the duty of the register and receiver of the land office to take testimony with reference to such land within their respective districts as shall appear to be saline in character, and makes it the duty of the commissioner to offer such lands for sale, and the act contemplates that the saline lands thus to be offered were such as should be found to be of the same character as those embraced in the grant formerly made to certain States and Territories, and the act was intended to prevent a defeat of existing or future grants of that character.

New Mexico, In re, 35 L. D. 1, p. 4.

22 STAT. 349, AUGUST 7, 1882.

LEASE OF SALT DEPOSITS—MANUFACTURE OF SALT.

AN ACT For the manufacture of salt in the Indian Territory.

Be it enacted, etc., That the legislative council of the Cherokee Nation may execute a lease of the salines or salt deposits on the

plains, not to exceed three in number, located on the lands of the Cherokee Nation lying west of the 96° of longitude in the Indian Territory, and so much land connected therewith as may be necessary for the working of the same, for a period of not exceeding 20 years, with right of a highway for ingress and egress, to be reserved for such purpose, and to facilitate the manufacture of salt, and the conditions of which lease shall insure the payment to the Cherokee national authorities of a royalty of not less than $1 per ton; said lease being subject to such conditions and to the proper jurisdiction of the Chereokee national legislature, and said lease and conditions subject to the approval of the Secretary of the Interior: Provided, That the proceeds of such royalty from the manufacture of salt shall be an addition to the educational fund of said nation: And provided further, That said salines shall continue subject to any rights of the United States under sections 15 and 16 of the treaty of July 19, 1866, with the Cherokee Indians; and said lease or leases shall be liable to revocation by the legislative council of the Cherokee Nation and the Secretary of the Interior for the nonperformance of any of said conditions.

A. SALINES—LEASE FOR SALT MANUFACTURE.

See 14 Stat. 799, p. 952.

By this act Congress authorized the Cherokee Nation to lease a definite number of the salines or salt deposits within its territory to facilitate the manufacture of salt.

New Mexico, In re, 35 L. D. 1, p. 5.

31 STAT. 745, JANUARY 31, 1901.

MINERAL LAWS EXTENDED TO SALINES AND SALT SPRINGS.

AN ACT Extending the mining laws to saline lands.

Be it enacted, etc., That all unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: Provided, That the same person shall not locate or enter more than one claim hereunder.

A. SALINE LAND ACT.

1. ACQUISITION OF SALINES UNDER MINING LAWS.
2. MINING LAWS EXTENDED TO SALINES AND SALT SPRINGS.
3. ROCK SALT—LOCATION AND EFFECT.

1. ACQUISITION OF SALINES UNDER MINING LAWS.

The saline land act prohibits in effect the acquisition of public lands chiefly valuable for salines under any law other than the mineral land laws, and neither those nor any other law designated any means by which this prohibition was to be enforced, and accordingly the selection by some appropriate means devolved upon the officers of the Land Department, subject to the approval of the Secretary of the Interior; but these officers could not be expected to have a personal knowledge of what public lands were chiefly valuable for salines, and little or no information of value on the subject would be afforded by the records in their custody, and an applicant for a patent for

such lands could reasonably be expected to be well informed as to the character of land for which application for a patent was made, and an applicant under the soldiers' additional homestead law must comply with the regulations and show that the land applied for is nonsaline, and he is not entitled to a patent until he complies with such regulation.

Leonard v. Lennox, 181 Fed. 760, p. 766.

By this act all unoccupied public lands containing salt springs or deposits of salt in any form, and chiefly valuable therefor, are made subject to location and purchase under the placer mining laws, and the policy of the Government was to reserve saline lands from disposition under any other public land laws, whether relating to agricultural lands or to location and purchase of mineral land, except as provided by the act of January 12, 1877 (19 Stat. 221).

New Mexico, In re, 31 L. D. 389, p. 390.

Salines or saline lands were not, prior to this act, subject to entry under the statutes authorizing disposal of mineral lands.

Miller, In re, 33 L. D. 121, p. 122.
See Salt Bluff Placer, In re, 7 L. D. 549.
Southwestern Min. Co., In re, 14 L. D. 597.

2. MINING LAWS EXTENDED TO SALINES AND SALT SPRINGS.

This act extends the mining laws to saline lands, and the term "saline lands" is employed as embracing and in the same sense as the terms "salt springs" and "deposits of salt in any form," and it mentions but one substance and that is salt.

New Mexico, In re, 35 L. D. 1, p. 7.

This act extended the mining laws to saline lands and rendered the unoccupied public lands containing salt springs or deposits of salt in any form and chiefly valuable therefor subject to location and purchase under the provisions of the law relating to placer mining claims.

Lovely Placer Claim, In re, 35 L. D. 426, p. 427.
Oklahoma, In re, 35 L. D. 509, p. 511.

3. ROCK SALT—LOCATION AND EFFECT.

Ledges of rock salt found upon the public domain are subject to occupation and sale under the provisions of the mining laws, and the proper locations of such ledges carry with them every incident of possessory title conferred by the mining laws.

McGarrigle, In re, 9 C. L. O. 113.

SETTLERS' RELIEF ACTS.

3 STAT. 220, MARCH 25, 1816.

PERMISSION TO WORK SALT SPRINGS AND LEAD MINES.

AN ACT Relating to settlers on the lands of the United States.

Be it enacted, etc., That any person or persons who, before the 1st day of February, 1816, had taken possession of, occupied or made a settlement on, any lands ceded or secured to the United States, * * * may, at any time prior to the 1st day of September next, apply to the proper register or recorder, * * * to permit, * * * such applicant or applicants to remain on such tract or tracts of land; * * * And provided also, That in all cases where the tract or land applied for includes either a lead mine or salt spring, no permission to work the same shall be granted without the approbation of the President of the United States.

A. WORKING LEAD MINES OR SALT SPRINGS PROHIBITED.

Under this act no permission to work lead mines or salt springs included in any tract of land applied for can be given without the approbation of the President.

Lease of Mineral Lands, In re, 4 Op. Atty. Gen. 480, p. 488.

18 STAT. 194, JUNE 22, 1874.

RAILROAD LANDS—RELIEF OF SETTLERS.

AN ACT For the relief of settlers on railroad lands.

Be it enacted, etc., That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the preemption or homestead laws of the United States subsequent to the time at which, by the decision of the Land Office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: Provided, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: And provided further, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been cer-

tified to any railroad company when such lands have been entered by a preemption or homestead settler after the location of the line of the road and prior to the notice to the local land office of the withdrawal of such lands from market.

A. RAILROAD GRANTS.

1. RELINQUISHMENT—SELECTION OF LIEU LANDS.
2. MINERALS EXCLUDED—EXCEPTIONS.

1. RELINQUISHMENT—SELECTION OF LIEU LANDS.

This act intends that the railroad company shall be entitled to lands equally valuable and equivalent in exchange for any lands relinquished or surrendered found in the possession of actual settlers, with the limitation that in the selection of the lieu lands they must be nonmineral in character, but they may be within the limits of the grant if not otherwise appropriated at the date of the selection.

Southern Pac. R. Co., In re, 18 L. D. 275, pp. 276, 278.

This act gives the railroad company, upon relinquishment of title to land entered, the right to select an equal quantity from other lands not mineral, within the limits of the grant, not otherwise appropriated.

Tucker v. Florida R., etc., Co., 19 L. D. 414, p. 416.

2. MINERALS EXCLUDED—EXCEPTIONS.

The mining statutes, with reference to minerals found in the public domain, did not limit the lands to those containing valuable metals, such as gold, silver, cinnabar, and copper.

Florida Central & Peninsular R. Co., 26 L. D. 600, p. 601.

The word mineral, as employed in this act, can not be construed to include lands containing deposits of phosphate.

Tucker v. Florida R., etc., Co., 19 L. D. 414, p. 416.
See Union Oil Co., In re, 23 L. D. 222, p. 227.

21 STAT. 140, MAY 14, 1880.

PREEMPTION, HOMESTEAD, AND TIMBER-CULTURE ENTRIES.

AN ACT For the relief of settlers on public lands.

Be it enacted, etc., That when a preemption, homestead, or timber-culture claimant shall file a written relinquishment of his claim in the local land office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

SEC. 2. In all cases where any person has contested, paid the land-office fees, and procured the cancellation of any preemption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed 30 days from date of such notice to enter said lands: Provided, That said register shall be entitled to a fee of $1 for the giving of such notice, to be paid by the contestant, and not to be reported.

SEC. 3. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether sur-

veyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under the preemption laws.

A. SETTLERS' RELIEF ACT.

1. CONSTRUCTION.
2. APPLICATION OF ACT.
3. RIGHTS CONFERRED.
4. PREFERENCE RIGHT OF ENTRY.

1. CONSTRUCTION.

See 21 Stat. 287, p. 1235.

The construction placed upon this act does not conflict with existing rules and regulations governing entries under the mineral and coal-land laws.

Hobbs, In re, 1 Copp's Pub. Lands 161, p. 162.

2. APPLICATION OF ACT.

Neither the original act nor the amended act has any application to a purchase under the act of June 3, 1878 (20 Stat. 89), nor the amendment of August 4, 1892 (27 Stat. 348).

Manners Construction Co. v. Reese, 31 L. D. 408, p. 409.

Section 2 of this act must be construed to apply to entries of coal lands under the act of March 3, 1873 (17 Stat. 607).

Hobbs, In re, 1 Copp's Pub. Lands 161, p. 162.

Section 2 gives an original right of entry to any person who has contested, paid the land-office fees, and procured the cancellation of any preemption, homestead, or timber-culture entry.

Dornen v. Vaughn, 16 L. D. 8, p. 10.

3. RIGHTS CONFERRED.

Inchoate rights in mineral lands in Alabama acquired under this act are permitted by the act of March 3, 1883 (22 Stat. 487).

Jones, In re, 11 C. L. O. 260.

This act confers no rights until after entry is made and then only as against adverse or intervening claimants, and cuts off or defeats any rights that ordinarily would have inured to the settler failing to file his application at the local office prior to the enactment.

Lalley, In re, 10 C. L. O. 55.

4. PREFERENCE RIGHT OF ENTRY.

The preference right of entry given a successful contestant by this act extends to an agricultural claimant who has successfully contested a mineral claim.

Dornen v. Vaughn, 16 L. D. 8, p. 10.
See Richardson v. Wilson, 41 L. D. 275, p. 277.

Neither a declaratory statement nor an application is an entry or an equivalent thereof, within the meaning of this act, which grants a preference right of entry only to one who contests, pays the fees, and procures the cancellation of an entry.

Richardson v. Wilson, 41 L. D. 275, p. 277.

21 STAT. 237, JUNE 15, 1880.

TRESPASS—CONDONED BY PURCHASE.

AN ACT Relating to the public lands of the United States.

Be it enacted, etc., That when any lands of the United States shall have been entered and the Government price paid therefor in full no criminal suit or proceeding by or in the name of the United States shall thereafter be had or further maintained for any trespasses upon or for or on account of any material taken from said lands, and no civil suit or proceeding shall be had or further maintained for or on account of any trespasses upon or material taken from the said lands of the United States in the ordinary clearing of land, in working a mining claim or for agricultural or domestic purposes, or for maintaining improvements upon the land of any bona fide settler, or for or on account of any timber or material taken or used by any person without fault or knowledge of the trespass, or for or on account of any timber taken or used without fraud or collusion by any person who in good faith paid the officers or agents of the United States for the same, or for or on account of any alleged conspiracy in relation thereto: Provided, That the provisions of this section shall apply only to trespasses and acts done or committed and conspiracies entered into prior to March 1, 1879: And provided further, That defendants in such suits or proceedings shall exhibit to the proper courts or officer the evidence of such entry and payment and shall pay all costs accrued up to the time of such entry.

* * * * * * *

SEC. 4. This act shall not apply to any of the mineral lands of the United States; and no person who shall be prosecuted for or proceeded against on account of any trespass committed or material taken from any of the public lands after March 1, 1879, shall be entitled to the benefit thereof.

A. APPLICATION OF ACT TO MINERAL LANDS.
B. PURCHASE OF LANDS CONDONES TRESPASS.

A. APPLICATION OF ACT TO MINERAL LANDS.

This act does not apply to the mineral lands of the United States and persons committing trespasses on such lands are not entitled to the benefit of the act.

Coe, In re, 2 L. D. 829, p. 830.

Lands of known mineral character were not purchasable under section 2 of this act.

Banks, In re, 16 C. L. O. 74.

B. PURCHASE OF LANDS CONDONES TRESPASS.

The statute contemplates that persons who commit trespass on nonmineral public lands prior to March 1, 1879, may condone the offence by purchase of the lands at the Government price.

Coe, In re, 2 L. D. 829.

The failure of a settler to comply with the homestead laws with regard to settlement and residence does not affect right to purchase the land under section 2 of this act.

Williams, In re, 11 L. D. 462, p. 463.

The second proviso of this act is a limitation upon the first, but it does not protect from the operation of the first proviso an application to purchase under the second section of this act.

Caste, In re, 3 L. D. 169, p. 174.
Banks, In re, 16 C. L. O. 74.

A fraudulent entry can not constitute a basis of purchase under this act.

Williams, In re, 11 L. D. 462.
See Cone, In re, 7 L. D. 94.

21 STAT. 287, chap. 244, JUNE 16, 1880.

CANCELLATION OF ENTRIES—REPAYMENT OF FEES.

AN ACT For the relief of certain settlers on public lands and to provide for the repayment of fees, purchase money, and commissions paid on void entries.

Be it enacted, etc. * * *

SEC. 2. In all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and can not be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office, and in all cases where parties have paid double minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of $1.25 per acre shall in like manner be repaid to the purchaser thereof, or to his heirs or assigns.

* * * * * * *

See sec. 2362 R. S., p. 847.

A. SETTLERS' RELIEF ACT.

1. CONSTRUCTION AND APPLICATION OF ACT.
2. REPAYMENT IN CASE OF ERRONEOUS ENTRY ONLY.
3. WHO ARE ENTRYMEN ENTITLED TO RELIEF.
4. ASSIGNEES ENTITLED TO RELIEF.
5. NO REPAYMENT ON FRAUDULENT ENTRY.

1. CONSTRUCTION AND APPLICATION OF ACT.

See 21 Stat. 140, p. 1216.

This act proceeds upon equitable principles and is intended to be administered accordingly and is to be interpreted with appropriate regard of the spirit that prompted it.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 223.

The act of March 26, 1908 (35 Stat. 48), is supplemental to this act and was intended to apply particularly where mineral entries were disallowed or canceled and to authorize repayment of the purchase money in such cases.

Hawk, In re, 41 L. D. 350, p. 352.

2. REPAYMENT IN CASE OF ERRONEOUS ENTRY ONLY.

A repayment may be made where an entry has been erroneously allowed and can not be confirmed.

Hudson Min. Co., In re, 14 L. D. 544.
See Thomas, In re, 13 L. D. 359.
Bell, In re, 39 L. D. 191.

Where a mineral entry was canceled because of lack of proof as to discovery, a repayment of the price is not authorized under this act, although the claimant's expenditures clearly shows an honest belief on his part that a valuable deposit of placer gold might be developed on the premises.

Hawk, In re, 41 L. D. 350, p. 352.

Where a mineral entry was not erroneously allowed or canceled for conflict, repayment of the purchase price was not specifically authorized under this section.

Hawk, In re, 41 L. D. 350, p. 352.

The entire interest in a mining claim is not required to be represented in an application for repayment before return of any part of the purchase money can be made, as such return may be made to one who showed but a partial interest according to the proportion of his interest.

Harper, In re, 23 L. D. 249, p. 250.

3. WHO ARE ENTRYMEN ENTITLED TO RELIEF.

A person making an entry, although making it for the benefit of another who furnished the purchase price, is an entryman within the meaning of this section.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 222.

4. ASSIGNEES ENTITLED TO RELIEF.

Persons who purchase mineral lands after entries are completed and take assignments of the title are assignees within the meaning of this statute authorizing the return of the purchase money.

Harper, In re, 23 L. D. 249, p. 250.

An assign within the meaning of this section is one who becomes invested with the entryman's right in the land through some voluntary act of such entryman.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 223.

5. NO REPAYMENT ON FRAUDULENT ENTRY.

An assignee of a fraudulent entryman seeking to obtain title to coal land under the coal mining statute is not entitled to a repayment of the purchase price, though furnished by such assignee, where the entry is canceled by reason of the fraudulent conspiracy to obtain the land, as in such case the entry is not canceled because "erroneously allowed."

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.

If a tract of land were subject to entry and the proof showed a compliance with the law, and the entry should be subsequently canceled because the proofs were shown to be false, it could not be claimed that the entry was "erroneously allowed," and in such case repayment is not authorized by this section.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.

Persons conspiring to obtain coal land under the provisions of sections 2347 to 2352 of the Revised Statutes are not entitled on cancellation of the entry to repayment under the provisions of this statute, because they are not entitled to invoke the principles of an equitable and remedial statute.

United States v. Colorado Anthracite Co., 225 U. S. 219, p. 224.

26 STAT. 662, OCTOBER 1, 1890.

PROTECTION AGAINST PHOSPHATE DISCOVERIES.

AN ACT For the protection of actual settlers who have made homesteads or preemption entries upon the public lands of the United States in the State of Florida upon which deposits of phosphate have been discovered since such entries were made.

Be it enacted, etc., That any person who has in good faith entered upon any lands of the United States in the State of Florida, subject at the date of said entry to homestead or preemption entry, and has actually occupied and improved the same for the purpose of making his or her home thereon, under the homestead or preemption laws, prior to the 1st day of April, 1890, shall have the right, upon complying with the further requirements of the law, in other respects to complete such homestead or preemption entry and receive a patent for the land so entered, occupied, and improved, notwithstanding any discovery of phosphate deposits upon or under the surface of any of said lands after such entry was made: Provided, That the entryman had no knowledge of the existence of such phosphate deposits upon the land which is the subject of such entry at the date when the settlement thereon was made.

See pp. 1050, 1051.

A. PURPOSE OF ACT—SETTLERS PROTECTED.

1. PHOSPHATE DISCOVERIES—PROTECTION OF SETTLERS—BURDEN OF PROOF.

On the discovery of phosphate lands and their value all entries made for lands containing such deposits were suspended and this act was passed for the protection of entrymen who had no knowledge of such deposits at the time of their settlement.

Tucker v. Florida R., etc., Co., 19 L. D. 414, p. 417.

This act is entirely retrospective and applies exclusively to entries made prior to April 1, 1890.

Gary v. Todd, 19 L. D. 475, p. 476.

Local officers can not ignore the law passed expressly for the protection of entries made on phosphate lands in Florida, because phosphate was found in other parts of the same county or in adjoining counties, and because an entryman expressed suspicion and hoped that some might be found on his land.

Gary v. Todd, 19 L. D. 475, p. 467 (on review).

This act authorizes the occupation of public lands in Florida under homestead and preemption laws notwithstanding any discovery of phosphate deposits upon or under the surface, provided the entryman had no knowledge of the existence of such phosphate deposits when he settled thereon.

Gary v. Todd, 18 L. D. 58.

Where an attempt is made to defeat an existing entry the burden of proof is on the party attacking its validity, and it must be shown that the phosphate deposit was upon the land which was the subject of the entry and that the entryman had knowledge of the existence of such deposits on his claim.

Gary v. Todd, 19 L. D. 475, p. 476.

26 STAT. 1095, 1 SUPP. R. S. 940, MARCH 3, 1891.

REPEAL OF TIMBER-CULTURE AND PREEMPTION LAWS.

AN ACT To repeal timber-culture laws, and for other purposes.

Be it enacted, etc., That an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the western

prairies,'" approved June 14, 1878 (20 Stat. 113), and all laws supplementary thereto or amendatory thereof, be, and the same are hereby, repealed: Provided, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the passage of this act may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; * * *

Section 2 of this act amends the act of March 3, 1877 (19 Stat. 377, ch. 107), and is placed with that act.

SEC. 4. That chapter 4 of title 32, excepting sections 2275, 2276, and 2286 of the Revised Statutes of the United States, and all other laws allowing preemption of the public lands of the United States, are hereby repealed, but all bona fide claims lawfully initiated before the passage of this act under any of said provisions of law so repealed, may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed.

* * * * * * *

SEC. 7. That whenever it shall appear to the Commissioner of the General Land Office that a clerical error has been committed in the entry of any of the public lands such entry may be suspended, upon proper notification to the claimant, through the local land office, until the error has been corrected; and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and certificates issued, and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to March 1, 1888, and after final entry, to bona fide purchasers, or incumbrancers, for a valuable consideration, shall, unless upon an investigation by a Government agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the Land Department of such sale or incumbrance: Provided, That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor.

The act of March 3, 1891 (26 Stat. 1093), amending the original section 8 of this act is placed with 20 Stat. 88, p. 1335.

SEC. 9. That hereafter no public lands of the United States, except abandoned military or other reservations, isolated and disconnected fractional tracts authorized to be sold by section 2455 of the Revised Statutes, and mineral and other lands the sale of which at public auction has been authorized by acts of Congress of a special nature having local application, shall be sold at public sale.

SEC. 10. That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be dis-

posed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements, except as provided in section 5 of this act.

Section 11 applies to town sites and is section 85, Alaska Compiled Laws, p. 867.
Section 12 is the same as section 92½, Alaska Compiled Laws, p. 868.
Section 13 is section 92½, Alaska Compiled Laws, p. 868.
Section 14 is section 92½, Alaska Compiled Laws, p. 868.
Section 16 applies to town sites and is with section 2386 R. S., p. 1378.

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1889, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provision of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1891, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than 320 acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral-land laws.

Section 18 of this act is with 10 Stat. 28, Right of Way, p. 1188.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within 12 months after the location of 10 miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within 12 months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date

of their filing, as though filed under it: Provided, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

SEC. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

Section 22 of this act applies to town sites and is with section 2386 R. S., p. 1379.

SEC. 23. That in all cases where second entries of land on the Osage Indian trust and diminished reserve lands in Kansas, to which at the time there were no adverse claims, have been made and the law complied with as to residence and improvement, said entries be, and the same are hereby, confirmed, and in all cases where persons were actual settlers and residing upon their claims upon said Osage Indian trust and diminished reserve lands in the State of Kansas on May 9, 1872, and who have made subsequent preemption entries either upon public or upon said Osage Indian trust and diminished reserve lands, upon which there were no legal prior adverse claims at the time, and the law complied with as to settlement, said subsequent entries be, and the same are hereby, confirmed.

Section 24 of this act applies to reservations and is with 16 Stat. 149, p. 1164.

A. PURPOSE AND CONSTRUCTION OF ACT.
B. APPLICATION OF ACT, p. 1225.
C. HOMESTEAD SETTLEMENTS, p. 1226.
D. RIGHTS OF WAY—EASEMENTS, p. 1228.
E. CLAIMS INITIATED UNDER ACT, p. 1228.

A. PURPOSE AND CONSTRUCTION OF ACT.

1. SETTLERS' RIGHTS PROTECTED.
2. MINERAL LANDS RESERVED.
3. ACT NOT RETROACTIVE.
4. REPEALING EFFECT.

1. SETTLERS' RIGHTS PROTECTED.

The object of this statute and other similar acts is to preserve the right of the actual settler, but not to open the door to manifest abuses, and during the five years' residence required the settler can treat the land as his own only so far as is necessary to carry out the purposes of the statute, as the law contemplates the possibility of his abandoning it, but prevents him in the meantime from destroying its value to others who may wish to enter or purchase it.

Shiver v. United States, 159 U. S. 491, p. 497.

This section requires a settler to show by affidavit his faithful endeavor to comply with all legal requirements as to settlement, residence, and cultivation necessary to acquire title to the land; and to show that he is not acting as agent for or in collusion with any other person to give them the benefit of either the land or the timber thereon.

Shiver v. United States, 159 U. S. 491, p. 496.

2. MINERAL LANDS RESERVED.

This act is intended to be read and construed in connection with the general reservation of mineral lands contained in the mining statutes which declare that lands valuable for minerals shall be reserved from sale except as provided by law.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 47.
See United States v. Burkett, 150 Fed. 208, p. 211.

3. ACT NOT RETROACTIVE.

This act is not intended to be retroactive and can only apply to entries made after its passage.

Protector Lode, In re, 12 L. D. 662, p. 663.

This statute does not affect pending cases because the terms of the act were not such as to make it retroactive in its effect.

Plymouth Lode, In re, 12 L. D. 513, p. 515.
Pacific Slope Lode, In re, 12 L. D. 686, p. 689.

4. REPEALING EFFECT.

This statute repeals the provisions of the preemption law in which in express terms was the provision in respect to known salines or mines.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 41.
Dornen v. Vaughn, 16 L. D. 8, p. 11.

The repealing provision of this statute did not affect an entry made before its enactment, but preserved any rights in the land unimpaired and left the time within which final proofs could be made without change.

United States v. Burkett, 150 Fed. 208, p. 211.

While this statute repealing the preemption law also eliminated from the homestead law "known salines or mines," the statute declaring that no mineral lands shall be liable to entry and settlement under the provisions of the homestead law was still in force and the term "mineral lands," as used in that statute, is more general and much broader than the term referring to any known salines or mines in the original preemption law.

Cosmos Exploration Co. v. Gray Eagle Oil Co., 104 Fed. 20, p. 46.
See United States v. Burkett, 150 Fed. 208, p. 211.

B. APPLICATION OF ACT.

1. NONMINERAL LANDS.
2. MINERAL LANDS IN RESERVATIONS—ENTRY.

1. NONMINERAL LANDS.

The regulations prescribed for carrying into effect the provisions of this act declare that its operation shall be confined to nonmineral lands.

White, In re, 34 L. D. 78, p. 79.
City & County of Beaver, In re, 34 L. D. 112, p. 113.

This act confirms entries of the classes named in the statute authorizing them and which are for lands commonly spoken of as agricultural as distinguished from mineral lands.

Herman v. Chase, 37 L. D. 590, p. 591.

The proviso of section 7 of this act has no validating effect upon or application to a void entry, and embraces within its purview only the particular classes of entry therein mentioned.

Herman v. Chase, 37 L. D. 590, p. 592.
See Cobb, In re, 37 L. D. 181.

Congress did not intend by this act, providing for disposal of the general nonmineral public domain, to confirm entries for lands especially classed for disposal under special conditions at specified prices and applicable to them distinctly.

Herman v. Chase, 37 L. D. 590, p. 592.

Under this amendment if more than the limitation in the original statute (26 Stat. 371, p. 391) is sought to be entered as mineral land the excess (not to exceed 160 acres) may be also suitable for agricultural purposes, but if its chief value is for the mineral thereon then it shall be subject to the mineral land laws and exempt from the limitation.

Harrison, In re, 19 L. D. 299, p. 300.

2. MINERAL LANDS IN RESERVATIONS—ENTRY.

The provisions of the act of June 4, 1897 (40 Stat. 11, p. 36), as to the right to enter upon reservations for the purpose of prospecting, locating, and developing the mineral resources therein and providing that mineral lands in any forest reservation are subject to entry under the existing mining laws of the United States apply to all public forest reservations established under the authority of this act.

Crowder, In re, 30 L. D. 92, p. 94.

C. HOMESTEAD SETTLEMENTS.

1. SHOWING AS TO INTENT AND USE.
2. MINERAL CHARACTER OF LAND—DETERMINATION.
3. VALID MINING CLAIM—FAILURE TO PROSPECT OR DISCOVER.
4. COAL LANDS—APPLICATION OF ACT.
5. RIGHT TO CUT TIMBER—USES.
6. SUITS TO CANCEL PATENTS.

1. SHOWING AS TO INTENT AND USE.

The homesteader must show by his affidavit that he is not entering land as agent for any person or corporation or to give such person or corporation the benefit of the land or the timber thereon.

Shiver v. United States, 159 U. S. 491, p. 496.
Williamson v. United States, 207 U. S. 425, p. 459.

2. MINERAL CHARACTER OF LAND—DETERMINATION.

The proviso of section 7 does not preclude the department from ordering an investigation for the purpose of determining the known character of the land at the date of the final entry and from canceling the entry if the evidence shows that the land was at that time known to be chiefly valuable for coal.

Herman v. Chase, 37 L. D. 590, p. 592.

Conditions with respect to the character of land as they exist at the date of entry, or at the time when all the necessary requirements have been complied with by the person seeking title, must determine whether the land is subject to sale or disposal

and no change in conditions subsequently occurring can impair or otherwise affect the right of the applicant to a patent, as the right to a patent once vested is equivalent to a patent issued.

Harkrader v. Goldstein, 31 L. D. 87, p. 94.

3. VALID MINING CLAIM—FAILURE TO PROSPECT OR DISCOVER.

A location can not be held to be a valid mining claim or possession within the meaning of the law where the applicant has had ample time and opportunity to show by exploration and development whether valuable mineral deposits exist on the land and has not done so and has not in any manner established that his location embraces mineral land.

Brophy v. O'Hare, 34 L. D. 596, p. 598.
See Purtle v. Steffee, 31 L. D. 400, p. 402.

4. COAL LANDS—APPLICATION OF ACT.

The action of the Land Department in withdrawing lands on account of their supposed coal character and in ordering an investigation of entries made thereon constitutes a protest against such entries within the meaning of this section of this act, as this amounts to a charge that the lands withdrawn were coal lands, and this, if true, constitutes an insurmountable obstacle to the acquisition of any title thereto under the desert-land laws.

Blinn, In re, 40 L. D. 97, p. 100.

Where lands returned as containing coal were not offered at public sale no question can be raised as to the validity of such sale after the expiration of two years from the date of the issuance of the receiver's receipt upon the final entry, and they come within the confirmatory provisions of the seventh section of this act.

Harris, In re, 28 L. D. 90, p. 91.

Where proceedings are instituted by the Government to set aside coal-land entries because of fraud notice to the original entryman is not required where such entryman has transferred his entire interest in the claim and is under no liability to protect his transferree.

Stough, In re, 41 L. D. 616, p. 620.
Distinguishing Romance Lode Min. Claim, In re, 31 L. D. 51.

A proceeding timely commenced against a coal-land entry on a charge of fraud can not be regarded as discontinued because of an indefinite postponement extending beyond the two years within which the proceedings are required to be commenced.

Stough, In re, 41 L. D. 616, p. 621.

The proviso of section 7, giving the right to patent where no contest or protest has been filed within two years after the receiver's receipt upon the final entry of the lands therein described, does not include coal-land entries.

United States v. Yankee Fuel Co., 195 Fed. 850, p. 851.
Stough, In re, 41 L. D. 616, p. 621.

The word "preemption" used in this statute may in its general use have a varied meaning, but in this statute it has a well-defined technical meaning, and the meaning there applied can not be extended to coal-land entries under section 2347 Revised Statutes.

United States v. Yankee Fuel Co., 195 Fed. 850, p. 852.
Distinguishing United States v. Ballinger, 33 App. Cas. (D. C.) 211.
See Atherton v. Fowler, 96 U. S. 513.
Harris, In re, 28 L. D. 90.
Alaska Coal Lands, In re, 39 L. D. 327, p. 332.

5. RIGHT TO CUT TIMBER—USES.

See 20 Stat. 88, p. 1335.

The settler upon a homestead may cut such timber only as is necessary to clear the land for cultivation, including the necessary buildings and fences, but he may exchange timber for lumber for such purposes, but not to sell except such as may be necessarily cut for cultivation.

Shiver v. United States, 159 U. S. 491, p. 498.

6. SUITS TO CANCEL PATENTS.

Under this statute suits by the United States to annul patents to mining claims issued before the passage of the act must be brought within five years from the date of its passage.

Peabody Gold Min. Co. v. Gold Hill Min. Co., 106 Fed. 241.

D. RIGHTS OF WAY—EASEMENTS.

1. USE OF CANALS—METHOD OF ACQUIRING.
2. RESERVOIR SITES—SELECTION.

1. USE FOR CANALS—METHOD OF ACQUIRING.

See 26 Stat. 371, p. 391, p. 1189.

In order to acquire a right of way over public lands for canal and reservoir purposes under this act it is essential that the map of the location of the canal and the reservoir shall be approved by the Secretary of the Interior, and such approval is a condition precedent to the taking effect of the grant of the right of way.

United States v. Rickey Land & Cattle Co., 164 Fed. 496, p. 500.
See Nippel v. Forker, 26 Colo. 74.

This section extends the benefits of this act to all canals, ditches, or reservoirs theretofore or thereafter constructed upon the public domain, and it also grants the right to file with the Land Department a map of such canal, ditch, and reservoir which was granted by section 2339 R. S.

Lincoln County Water Supply & Land Co. v. Big Sandy Reservoir Co., 32 L. D. 463, p. 464.

2. RESERVOIR SITES—SELECTION.

Land in the actual possession of a mineral claimant who has complied with the mining laws, regulations, and customs and made application for a patent can not be selected as a reservoir under this statute.

Gabathuler, In re, 15 L. D. 418.

A mineral location can not be made on lands already selected for a reservoir site and the locator acquires no rights under his mining entry, but such entry may be permitted if it subsequently appears that the land is not required for reservoir purposes.

Colomakas Gold Min. Co., 28 L. D. 172, p. 174.
See Gabathuler, In re, 15 L. D. 418.

E. CLAIMS INITIATED UNDER ACT.

The filing of a declaratory statement followed by a declaratory settlement, residence, and improvements constitute a bona fide claim lawfully initiated within the meaning of this section.

Thomas v. Thomassen, 16 L. D. 52, p. 54.

27 STAT. 390, AUGUST 5, 1892.

SETTLEMENTS ON RAILROAD LANDS—NORTH AND SOUTH DAKOTA.

AN ACT For the relief of settlers upon certain lands in the States of North Dakota and South Dakota.

Whereas under the rulings of the General Land Office the extension into Dakota Territory, now States of North Dakota and South Dakota, of the limits of the grants of land made by Congress to aid in the construction of the several lines of railroad now owned by the Saint Paul, Minneapolis & Manitoba Railway Co. was denied, and in consequence of said rulings lands within the limits of the said grants in the said States have been claimed, settled upon, occupied, and improved by numerous persons in good faith under color of title or of right to do so derived from the various laws of the United States relating to the public domain, and are now claimed by them, their heirs, or assigns, and many of said lands have actually been patented to such occupants or to their grantors; and

Whereas under recent construction of said grants the said occupants, improvers, or purchasers are liable to be evicted from their holdings: Now, therefore, for the purpose of relieving the said occupants, improvers, and purchasers of the said granted lands from the hardship of being now deprived of the same under the circumstances aforesaid,

Be it enacted, etc., That the Secretary of the Interior shall, as soon as conveniently may be done, cause to be prepared and delivered to the said railway company a list of the several tracts which have been purchased, claimed, occupied, and improved, as stated in section 2 of this act, and are now claimed by such purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. Within a reasonable time after the receipt by the said railway company of the said list, it shall execute under its corporate seal and deliver to the Secretary of the Interior its deed of conveyance, releasing to the United States all its claims upon the lands described in said list, and shall also procure and cause to be released to the United States all liens and claims to said lands derived through or under said company, whereupon all right, title, and interest of the said railway company to each of such tracts shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railway company, and all qualified persons who have occupied and made improvements on said lands, as herein provided, or who have purchased said lands in good faith, their heirs and assigns, shall be permitted to perfect their titles to said lands according to law as if said grants had never been made.

SEC. 2. That the said railway company is hereby permitted to select, in lieu of any lands forming odd-numbered sections or parts thereof situated in the State of North Dakota or in the State of South Dakota, within the ten-mile limits of a grant of lands made to the Territory of Minnesota by act of Congress, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3,

1857 (11 Stat. 195), as amended by an act of Congress, entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1865 (13 Stat. 526), and of a grant made by act of Congress entitled "An act authorizing the Saint Paul & Pacific Railroad Co. to change its line in consideration of a relinquishment of lands," approved March 3, 1871 (16 Stat. 588), opposite to and coterminous with such portion of said railroad as was constructed and completed within the time required by the said grant and the acts amendatory thereof for the construction and completion of the whole of said railroad, which, prior to January 1, 1891, any person had purchased or occupied or improved, in good faith, under color of title or right to do so, derived from any law of the United States relating to the public domain, but not including any lands within the limits of the grant, to aid in the construction of the Saint Vincent branch of said road, as located under the act of March 3, 1871 (16 Stat. 588), upon which any person or persons had, in good faith, settled and made or acquired valuable improvements thereon prior to March, 1877, an equal quantity of nonmineral public lands, so classified as nonmineral at the time of actual Government survey which has been or shall be made, of the United States not reserved and to which no adverse right or claim shall have attached or have been initiated at the time of the making of such selection lying within any State into or through which the railway owned by said railway company runs, to the extent of the lands so relinquished and released. * * *

A. LANDS SUBJECT TO SALE UNDER GRANT.
B. INDEMNITY SELECTIONS BY RAILROAD—CONSIDERATION.
C. RETURN OF LANDS AS MINERAL NOT A CLASSIFICATION.

A. LANDS SUBJECT TO SALE UNDER GRANT.

Lands subject to sale under this grant are restricted to nonmineral lands so classified at the time of the Government Survey, not reserved, and to which no adverse right or claim had attached or been initiated.

St. Paul, etc., R. Co., In re, 18 L. D. 258.

B. INDEMNITY SELECTIONS BY RAILROAD—CONSIDERATION.

In consideration of the relinquishment of certain lands in Dakota the railroad company by this act was permitted to select an equal quantity of nonmineral public lands classified as nonmineral at the time of actual Government survey which has been or shall be made.

Bedel v. St. Paul, etc., R. Co., 29 L. D. 254, p. 255.

Under this act lands classified as nonmineral at the time of actual Government survey may properly be selected by the railroad company under this grant.

Bedel v. St. Paul, etc., R. Co., 29 L. D. 254, p. 255.

C. RETURN OF LANDS AS MINERAL NOT A CLASSIFICATION.

A return of lands as mineral prior to the public survey can not be considered as a classification of lands as mineral at the time of the actual Government survey within the meaning of the act.

St. Paul, etc., R. Co., In re, 34 L. D. 211, p. 212.

33 STAT. 556, APRIL 28, 1904.

SETTLEMENTS ON RAILROAD LANDS—NEW MEXICO.

AN ACT For the relief of small-holding settlers within the limits of the grant of land to the Atlantic & Pacific Railroad Co. in the Territory of New Mexico.

Be it enacted, etc., That the Atlantic & Pacific Railroad Co., its successors in interest and its or their assigns, may, when requested by the Secretary of the Interior so to do, relinquish or deed, as may be proper, to the United States any section or sections of its or their lands in the Territory of New Mexico the title to which was derived by said railroad company through the act of Congress of July 27, 1866 (14 Stat. 294), in aid of the construction of said railroad, any portion of which section is and has been occupied by any settler or settlers as a home or homestead by themselves or their predecessors in interest for a period of not less than 25 years next before the passage of this act, and shall then be entitled to select in lieu thereof, and to have patented other sections of vacant public land of equal quality in said Territory, as may be agreed upon with the Secretary of the Interior.

SEC. 2. That the Secretary of the Interior shall, as soon as may be after the passage of this act, cause inquiry to be made of all lands so held by settlers, and shall cause the holdings of such settlers to be surveyed, and on receiving such relinquishments or deeds shall at once, without cost to the settlers, cause patents to issue to each such settler for his or her such holdings: Provided, That not to exceed 160 acres shall be patented to any one person, and such recipient must possess the qualifications necessary to entitle him or her to enter such land under the homestead laws.

SEC. 3. That any fractions of any such sections of land remaining after the issuance of patents to the settlers as aforesaid shall be subject to entry by citizens the same as other public lands of the United States.

34 STAT. 1406, MARCH 4, 1907.

HOMESTEADS IN ALABAMA.

AN ACT To amend an act entitled "An act for the relief of certain homestead settlers in the State of Alabama," approved February 24, 1905.

Be it enacted, etc., That the act entitled "An act for the relief of certain homestead settlers in the State of Alabama," approved February 24, 1905 (33 Stat. 813), be, and the same is hereby, amended so as to read as follows:

"That where any homestead entry heretofore allowed by the officers of the Land Department for lands within the limits of the grant made by act of Congress approved June 3, 1856 (11 Stat. 18), to the State of Alabama in aid of the construction of the railroad known as the Mobile & Girard Railroad has been canceled because of a superior claim to the land through purchase from the railroad company, which claim has been held to have been confirmed and a confirmatory patent issued for the land under the provisions of section 4 of the act of March 3, 1887 (24 Stat. 556), or where any homestead entry has been made on lands granted by the Congress of the United States to the State of Alabama, to aid in the construction of the Mobile & Girard Railroad, or the Tennessee & Coosa

Railroad, which said lands lie opposite to and coterminus with those portions of either of said roads which were constructed prior to the passage of the forfeiture act of September 29, 1890 (25 Stat. 496), the title to which is asserted and claimed by the vendee, or successor in interest of either of said railroad companies, such homesteader is hereby accorded the privilege of transferring his claim thus initiated under the homestead laws to any other nonmineral unappropriated public land subject to homestead entry, with full credit for the period of residence and for improvements made upon his said homestead entry prior to the order of its cancellation, or prior to the passage of this act: Provided, That he has not forfeited or voluntarily abandoned his homestead claim and that his application for transfer is presented within one year from the date of the passage of this act.

"Should such homesteader elect, however, to retain the tract embraced in his homestead entry heretofore canceled, or the tract so entered by him, the title to which may be claimed by the vendee or successor in interest of either of said railroad companies, the holder of the patented title, through the railroad grant, or of the title so claimed and asserted by any person, association, or corporation under either of said railroad grants as aforesaid shall thereupon be invited to relinquish or reconvey to the United States of America the land included in such homestead entry, and upon filing such relinquishment or reconveyance the party making such relinquishment or reconveyance shall be entitled to select and receive patent for an equal quantity of nontimbered, nonmineral, and unappropriated surveyed public lands subject to homestead entry within three years after the passage of this act, and upon the filing of such relinquishment or reconveyance all right, title, and interest under and through either of the said railroad grants or the confirmatory patent hereinbefore referred to shall revert to the United States, and the tract thus relinquished or reconveyed shall be treated and disposed of as other public lands of the United States: Provided, however, That such previous homesteader shall be reinstated in his rights and permitted to complete title to the land previously entered as though no cancellation of his homestead entry had been made or the title to the land had not been claimed and asserted adversely to him as aforesaid: Provided, That such homesteader or vendee or successor in interest of either of said railroad companies shall not be permitted to select more than 160 acres of lands in one section nor more than 320 acres of contiguous lands."

SEC. 2. That the Secretary of the Interior shall prescribe rules and regulations for the administration of this act.

A. SETTLERS' RELIEF ACT—WITHDRAWALS.

1. MINERAL LANDS NOT SUBJECT TO SELECTIONS.
2. NONMINERAL LANDS UNAFFECTED BY SUBSEQUENT DISCOVERIES.

1. MINERAL LANDS NOT SUBJECT TO SELECTIONS.

The rule that title to land not known to be mineral at date of selection of an entry will not be affected by later mineral discovery does not apply to a case where land was withdrawn at the time a selection was made and which has since been classified as coal.

Culver, In re, 40 L. D. 593, p. 594.

Under this act no mineral land is subject to selection, but by virtue of the act of March 3, 1909 (35 Stat. 844), a selection must necessarily be canceled; and only by compliance with this latter act can a selection by an applicant be permitted to stand.

Hurley, In re, 40 L. D. 591, p. 592.

35 STAT. 48, MARCH 26, 1908.

CANCELLATION OF ENTIRES—REPAYMENT OF MONEY.

AN ACT To provide for the repayment of certain commissions, excess payments, and purchase moneys paid under the public laws.

Be it enacted, etc., That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representative, in all cases where such application, entry, or proof has been or shall hereafter be rejected; and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

SEC. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

SEC. 3. That when the Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions in any case where repayment is authorized by this statute, the Secretary of the Interior shall at once certify such amounts to the Secretary of the Treasury, who is hereby authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and issue his warrant in settlement thereof.

A. SETTLERS' RELIEF ACT.

1. MINERAL ENTRIES CANCELED—REPAYMENT.

This act is supplemental to the act of June 16, 1880 (21 Stat. 287), and it affords relief in cases of mineral entries disallowed or canceled because of lack of proof of discovery.

Hawk, In re, 41 L. D. 350, p. 353.

Repayment of the purchase money paid in connection with a mineral entry is authorized by this act where the entry was canceled or rejected because of the lack of sufficient proof to establish discovery of mineral.

Hawk, In re, 41 L. D. 350, p. 352.

An honest mistake made by a locator of a mining claim in stating that the land was valuable for mineral deposits, when in fact no sufficient discovery under the statute was made and the entry was not allowed, is sufficient to authorize repayment under this act, in the absence of proof of fraud.

Hawk, In re, 41 L. D. 350, p. 353.

35 STAT. 645, FEBRUARY 24, 1909.

MINERAL SURVEYS—REPAYMENT.

AN ACT For relief of applicants for mineral surveys.

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of the moneys heretofore or hereafter covered into the Treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several cases may be, shall be deemed to be annually and permanently appropriated for that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor general of the district in which the mineral land surveyed, or sought to be surveyed is situated and approved by the Commissioner of the General Land Office.

A. MINERAL SURVEYS—RELIEF.

1. REPAYMENT OF EXCESSIVE DEPOSITS.
2. COST OF MINERAL SURVEYS—ASCERTAINMENT.

1. REPAYMENT OF EXCESSIVE DEPOSITS.

Prior to the adoption of this act there was no authority for the repayment of any excess of an amount deposited for the platting of a mineral claim and other office work in the surveyor general's office.

Hanson, In re, 38 L. D. 169, p. 171.
Hanson, In re, 38 L. D. 469.

This act authorizes the Secretary of the Treasury to pay out of money covered into the Treasury by individuals to cover the cost of work performed in connection with the survey of mineral lands any excess over and above the actual cost of work performed and the repayment is to be made upon an account certified by the surveyor general and approved by the Commissioner of the General Land Office.

Hanson, In re, 38 L. D. 169, p. 170.
Hanson, In re, 38 L. D. 469.

2. COST OF MINERAL SURVEYS—ASCERTAINMENT.

The cost of platting and of making copies of the plat and field notes required in mineral surveys should be ascertained by the value and the usual charge for such work at the time it was rendered, and the other expenses incident thereto should be ascertained from such data and information as will show what proportion of the estimated costs such expenses bear to the whole amount.

Hanson, In re, 38 L. D. 169, p. 171.

Where office work is performed by a special mineral survey force the expense and actual cost of the same must be paid out of the deposit, and the applicant has no interest therein or claim thereto.

Hanson, In re, 38 L. D. 469, p. 472.

SHERMAN ANTITRUST ACT—COAL COMPANIES.

See Pipe lines—Regulations, p. 1068.

26 STAT. 209, JULY 2, 1890.

COMBINATIONS.

AN ACT To protect trade and commerce against unlawful restraints and monopolies.

Be it enacted, etc., Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the Distrit of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion the court.

* * * * * * *

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

A. SHERMAN ANTITRUST ACT.

1. COMBINATIONS—EXTENT OF ACT.
2. COMBINATIONS—RIGHT OF COAL COMPANY TO REFUSE TO SELL.

1. COMBINATIONS—EXTENT OF ACT.

See 24 Stat. 379.

This act does not denounce every combination to engage in or to conduct commerce among the States, but it condemns those combinations alone which restrain such commerce and those only the necessary effect of which is to stifle and directly and substantially to restrict free competition in such commerce, nor is the combination condemned where it only incidentally and indirectly restricts competition.

Union Pac. Coal Co. v. United States, 173 Fed. 737, p. 739.

2. COMBINATIONS—RIGHT OF COAL COMPANY TO REFUSE TO SELL.

There is nothing in this act which deprives a coal company of any of the common rights of the owners and venders of merchandise, and if such coal company did not combine with others so to do its mere refusal to sell its coal to a certain person on certain conditions is not in violation of this act.

Union Pac. Coal Co. v. United States, 173 Fed. 737, p. 739.
See Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St. 173, p. 186.

A coal company engaged in mining and selling its coal is not prohibited by this act from refusing to sell its coal to a particular person nor from selecting its customers, fixing the price and terms of the sale, nor from selling to different persons at different prices.

Union Pac. Coal Co. v. United States, 173 Fed. 737, p. 739.

SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS.

17 STAT. 333, JUNE 8, 1872.

ADDITIONAL HOMESTEAD RIGHTS TO SOLDIERS.

AN ACT To amend an act relating to soldiers' and sailors' homesteads.

Be it enacted, etc., That the act entitled "An act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States," approved April 4, 1872 (17 Stat. 49), be, and the same is hereby, amended so as to read as follows: That every private soldier and officer who has served in the Army of the United States during the recent rebellion for 90 days, or more, and who was honorably discharged, and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act entitled "An act making appropriations for completing the defenses of Washington, and for other purposes," approved February 13, 1862 (12 Stat. 339), and every seaman, marine, and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for 90 days, and who was honorably discharged, and has remained loyal to the Government, shall, on compliance with the provisions of an act entitled "An act to secure homesteads to actual settlers on the public domain" (12 Stat. 392), and the acts amendatory thereof, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands (not mineral) not exceeding 160 acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States: Provided, That said homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement: And provided also, That the time which the homestead settler shall have served in the Army, Navy, or Marine Corps aforesaid shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received, or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served: Provided, however, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his said homestead for a period of at least one year after he shall commence his improvements as aforesaid. * * *

17 STAT. 605, MARCH 3, 1873.

HOMESTEAD RIGHTS TO SOLDIERS—AMENDMENT.

AN ACT To amend an act entitled "An act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States," and the amendments thereto.

Be it enacted, etc., That section 2 of the act entitled "An act to amend an act relating to soldiers' and sailors' homesteads," approved June 8, 1872 (17 Stat. 49), be amended so as to read as follows: "That any person entitled under the provisions of the foregoing sections to enter a homestead, who may have heretofore entered under the homestead laws a quantity of land less than 160 acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed 160 acres."

A. SOLDIERS' HOMESTEAD RIGHTS.

1. RIGHT TO LOCATE LANDS WITHDRAWN FOR COAL CLASSIFICATION.
2. COAL CHARACTER OF LAND—TIME OF DETERMINATION.

1. RIGHT TO LOCATE LANDS WITHDRAWN FOR COAL CLASSIFICATION.

See 35 Stat. 844, p. 812; 36 Stat. 583, p. 816.

Lands withdrawn from the public domain or classified as coal are, by the act of June 22, 1910 (36 Stat. 583), subject to entry by actual settlers only, and such lands are not subject to soldiers' additional homestead rights.

Jenne, In re, 40 L. D. 408, p. 409.

A substitution of a soldiers' additional homestead right filed in lieu of a similar right formerly held invalid does not relate back to the date of the original application, but runs only from the date of the last application under such substitution, and if at such date the land applied for was embraced in a coal-land withdrawal, the substituted application is unavailing.

Jenne, In re, 40 L. D. 408, p. 408.

An application to locate a soldiers' additional homestead right presented prior to June 22, 1910, and pending at the time of an order of withdrawal of lands for coal classification under the act of that date (36 Stat. 583), is not thereby defeated, but the applicant can receive only a limited patent for the land in accordance with the provisions of that act.

Moore, In re, 40 L. D. 461, p. 462.

2. COAL CHARACTER OF LAND—TIME OF DETERMINATION.

When the right to a patent under the soldiers' additional homestead law depends upon whether the land is agricultural or is known to be chiefly valuable for coal, that question must be determined according to the conditions existing at the time when the applicant complies with all the requirements of the statute and the regulations properly prescribed, and if the land is not then known to be chiefly valuable for coal he acquires a right to a patent which will not be disturbed by a subsequent change in the conditions, but if before such compliance it is discovered that the land is valuable for coal nothing that he may subsequently do will give him a right to a patent.

Leonard v. Lennox, 181 Fed. 760, p. 763.

STATE AND PUBLIC GRANTS.

I. STATE GRANTS.
II. CITIES, TOWNS, AND CORPORATIONS, p. 1305.

I. STATE GRANTS.

2 STAT. 173, APRIL 30, 1802.

SALINES AND SALT SPRINGS GRANTED TO OHIO.

AN ACT To enable the people of the eastern division of the territory northwest of the River Ohio to form a constitution and State government, etc.

Be it enacted, etc., * * *

SEC. 7. And be it further enacted, That the following propositions be, and the same are hereby, offered to the convention of the eastern State of the said territory, when formed, for their free acceptance or rejection, which if accepted by the convention shall be obligatory upon the United States. * * *

Second. That the 6-mile reservation, including the salt springs commonly called the Scioto salt springs, the salt springs near the Muskingum River, and in the military tract, with the sections of land which include the same, shall be granted to the said State for the use of the people thereof, the same to be used under such terms and conditions and regulations as the legislature of the said State shall direct: Provided, The said legislature shall never sell or lease the same for a longer period than 10 years.

A. SALT SPRINGS INCLUDED IN GRANT TO STATE.

See Lead mines, p. 1039; Reservations, p. 1159; Salines and salt springs, p. 1194; Settlers' relief acts, p. 1215.

The salt springs mentioned in this act were included in the grant to the State of Ohio.

Colorado, In re, 10 L. D. 222, p. 223.
New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

In the congressional grant to Ohio, in addition to the great Scioto salt spring reservation, the salt springs near the Muskingum River and in the military tract, and the sections of land in which the same were located, were included.

Alabama, In re, 21 L. D. 320, p. 322.

2 STAT. 277, MARCH 26, 1804.

SALINES AND SALT SPRINGS RESERVED.

AN ACT Making provision for the disposal of the public lands in the Indiana Territory.

Be it enacted, etc. * * *

SEC. 5. And be it further enacted, That all the lands aforesaid, not excepted by virtue of the preceding section, shall, with the exception

of section 16, which shall be reserved in each township for the support of schools within the same, * * * and with the exception also of the salt springs and lands reserved for the use of the same as hereinafter directed, be offered for sale to the highest bidder, under the direction of the surveyor general, or governor of the Indiana Territory. * * *

SEC. 6. And be it further enacted, That all the navigable rivers, creeks and waters, within the Indiana Territory, shall be deemed to be and remain public highways; and the several salt springs in the said Territory, together with as many contiguous sections to each, as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States. And any grant which may hereafter be made for a tract of land, containing a salt spring which had been discovered previous to the purchase of such tract from the United States, shall be considered as fraudulent and null.

A. SALT SPRINGS RESERVED.

By this act for the disposal of public lands in the Indiana Territory the salt springs, with as many contiguous sections to each as shall be deemed necessary by the President, were reserved for the future disposal of the United States.

Colorado, In re, 10 L. D. 222, p. 223.
Southwestern Min. Co., In re, 14 L. D. 597, p. 599.
Hall v. Litchfield, 2 C. L. O. 179.

This act recognizes the reservation from sale of salt springs.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl., 480, p. 488.

2 STAT. 324, MARCH 2, 1805.

SALT SPRINGS AND LEAD MINES RESERVED.

AN ACT For ascertaining and adjusting the titles and claims to land, within the territory of Orleans, and the District of Louisiana.

Be it enacted, etc., * * *.

SEC. 6. And be it further enacted, That the Secretary of the Treasury shall be, and he is hereby authorized to employ three agents, one for each board, and whose compensation shall not exceed $1,500 each, for the purpose of appearing before the commissioners, in behalf of the United States, to investigate the claims for lands, and to oppose all such as said agent may deem fraudulent and unfounded. It shall also be the duty of said agent for the district of Louisiana, to examine into and investigate the titles and claims, if any there be, to the lead mines within the said district, to collect all the evidence within his power, with respect to the claims to, and value of said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress, at their next ensuing session * * *.

A. SALT SPRINGS RESERVED.

This act, as amended by the act of April 21, 1806 (2 Stat. 391), providing for the future disposal of public lands, contained an exception of salt springs and lands contiguous thereto.

Southwestern Min. Co., In re, 14 L. D. 597, p. 599.

2 STAT. 391, APRIL 21, 1806.

SALT SPRINGS RESERVED.

AN ACT Supplementary to an act entitled "An act for ascertaining and adjusting titles and claims to land," etc. (2 Stat. 324).

Be it enacted, etc., * * *.

SEC. 11. And be it further enacted, That the President of the United States be, and he is hereby authorized, whenever he shall think it proper, to direct so much of the public lands lying in the western district of the territory of Orleans, as shall have been surveyed in conformity with the provisions of the act to which this act is a supplement, to be offered for sale. All such lands shall, with the exception of the section No. 16, which shall be reserved in each township for the support of schools within the same; with the exception also of an entire township to be located by the Secretary of the Treasury, for the use of a seminary of learning, and with the exception also of the salt springs, and lands contiguous thereto, which by direction of the President of the United States, may be reserved for the future (disposal) of the said States, shall be offered for sale to the highest bidder, under the direction of the register of the land office, of the receiver of public moneys, and of the principal deputy surveyor; and on such day or days, as shall, by a public proclamation of the President of the United States, be designated for that purpose.

2 STAT. 448, MARCH 3, 1807.

SALT SPRINGS AND LEAD MINES RESERVED.

AN ACT Respecting claims to land in the Territories of Orleans and Louisiana.

Be it enacted, etc., * * *

SEC. 4. And be it further enacted, That the commissioners appointed or to be appointed for the purpose of ascertaining the rights of persons claiming land in the Territories of Orleans and Louisiana, shall have full powers to decide according to the laws and established usages and customs of the French and Spanish Governments, upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representative of any person or persons, who were on the 20th of December, 1803, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring, which decision of the commissioners when in favor of the claimant shall be final, against the United States, any act of Congress to the contrary notwithstanding.

* * * * * * *

2 STAT. 617, FEBRUARY 15, 1811.

SALINES AND SALT SPRINGS—LEAD MINES—LOUISIANA.

AN ACT Providing for the final adjustment of claims to lands, etc., in Territories of Orleans and Louisiana.

Be it enacted, etc., * * *

SEC. 10. And be it further enacted, That the President of the United States be, and he is hereby, authorized, whenever he shall

think proper, to direct so much of the public lands lying in the Territory of Louisiana, as shall have been surveyed in conformity with the ninth section of this act, to be offered for sale. All such lands shall, with the exception of the section No. 16, which shall be reserved in each township for the support of schools within the same, with the exception also of a tract reserved for the support of a seminary of learning, as provided for by the eighth section of this act, and with the exception also of the salt springs and lead mines, and land contiguous thereto, which, by the direction of the President of the United States, may be reserved for the future disposal of the said States, shall be offered for sale to the highest bidder, under the direction of the register of the land office, and the receiver of public moneys, and of the principal deputy surveyor, and on such day or days as shall, by public proclamation of the President of the United States, be designated for that purpose. * * *

2 STAT. 662, MARCH 3, 1811.

SALINES AND SALT SPRINGS—LEAD MINES—ORLEANS AND LOUISIANA.

AN ACT Providing for the final adjustment of claims to lands, and for the sale of the public lands in the Territories of Orleans and Louisiana, etc.

Be it enacted, etc., * * *

SEC. 10. And be it further enacted, That the President of the United States be, and he is hereby, authorized, whenever he shall think proper, to direct so much of the public lands lying in the Territory of Louisiana, as shall have been surveyed in conformity with the eighth section of this act, to be offered for sale. All such lands shall, with the exception of the section No. 16, which shall be reserved in each township for the support of schools within the same, with the exception also of a tract reserved for the support of a seminary of learning, as provided for by the seventh section of this act, and with the exception also of the salt springs and lead mines, and lands contiguous thereto; which, by the direction of the President of the United States, may be reserved for the future disposal of the said States, shall be offered for sale to the highest bidder. * * *

A. SALT SPRINGS RESERVED.

See 10 Stat. 308, p. 1205.

This act authorized the President in offering lands for sale to except salt springs, lead mines, and lands contiguous thereto which were reserved for the future disposal of the States to be carved out of the Territory included in the Louisiana Purchase.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 668.

By this section salt springs and the land contiguous thereto were, by direction of the President, reserved for future disposal of the States.

Hall v. Litchfield, 3 C. L. O. 196.

This act expressly reserved section 16 in each township for the support of schools and also a tract for the support of a seminary of learning, with the exception of salt springs and lead mines and lands contiguous thereto.

Southwestern Min. Co., In re, 14 L. D. 597, p. 599.

2 STAT. 448, p. 449, MARCH 3, 1807.

LEAD MINES RESERVED.

AN ACT Making provision for disposal of public lands, etc.

Be it enacted, etc., * * *

SEC. 5. And be it further enacted, That the several lead mines in the Indiana Territory together with as many sections contiguous to each as shall be deemed necessary by the President of the United States shall be reserved for the future disposal of the United States; and any grant which may hereafter be made for a tract of land containing a lead mine, which has been discovered previous to the purchase of such tract from the United States, shall be considered fraudulent and null: And the President of the United States shall be, and is hereby, authorized to lease any lead mine which has been or may hereafter be discovered in the Indiana Territory, for a term not exceeding five years.

* * * * * * *

A. CONSTRUCTION—TERRITORY SAME AS LAND.
B. RESERVATION OF MINES.
C. LEAD MINES, p. 1244.

A. CONSTRUCTION—TERRITORY SAME AS LAND.

See 2 Stat. 445, p. 1197.

The term "territory," as used in the statute, is merely descriptive of one kind of property and is equivalent to the word "lands." Congress has the same power over it as over any other property belonging to the United States.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 536.

B. RESERVATION OF MINES.

1. POLICY.
2. LEAD MINES RESERVED.
3. VALUE DETERMINED BY OPERATION.

1. POLICY.

It has always been the policy of the Government in disposing of the public lands to reserve the mines for the use of the United States.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 537.
Hawke v. Deffeback, 4 Dak. 20, p. 26.

2. LEAD MINES RESERVED.

The fact that a new land district has been created out of a part of the territory in which the lead-mine lands had been reserved, giving the President authority to sell all lands in the new districts, does not have the effect to lessen the force of the original reservation.

United States v. Gear, 44 U. S. (3 How.) 120, p. 131.
Hawke v. Deffeback, 4 Dak. 20, p. 29.

All lead mines were reserved from lands sold under this act, and it excepts such lands from the operation of the preemption and homestead laws and from all grants

to railroads and States, making the parties who enter upon them without authority liable to an action for damages, and such mineral lands are disposed of only to citizens or those who had declared their intention to become such.

New Idria Min. Co., In re, Copp's Min. Dec. 47, p. 53.

Section 5 of this act is not repealed by section 4 of the act of June 26, 1834 (4 Stat. 686), and no authority is given by the latter act to dispose of the lead mines or minerals reserved from sale by this act.

United States v. Gear, 44 U. S. (3 How.), 120, p. 131.

3. VALUE DETERMINED BY OPERATION.

The value of the mines reserved on the sale of public lands can not be ascertained without causing them to be explored and worked under proper regulations.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 537.

The business of smelting is a part of the operation of mining, although it may be distinct from that of digging or mining the ore; but the law is not to be construed so as to require the whole operation to be embraced in the same contract, as they are different operations, requiring different qualifications and distinct regulations.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 538.

No permission shall be granted to work lead mines or salt springs without the approbation of the President, and the President is authorized to lease such mines and springs for a term not exceeding three years.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 484.

C. LEAD MINES.

1. PRESIDENT AUTHORIZED TO LEASE.

This act was the first to authorize the President to lease a lead mine.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 61.

The statute of March 3, 1807, authorizing the leasing of lead mines was enacted before Illinois was admitted as a State, and after its admission it can not complain of any disposition or regulation of the lead mines previously made by Congress.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 537.

The President is authorized under this act to lease salt springs, salines, and lead mines.

Lease of Lead Mines, In re, 4 Op. Atty. Genl. 480, p. 499.

The authority given to the President to lease lead mines by this section is limited to a term not exceeding five years; but this limitation is not to be construed as a prohibition to renew the leases from time to time if the President thinks proper so to do. His authority is limited to a short period, so as not to interfere with the power of Congress to otherwise dispose of the mines at its pleasure.

United States v. Gratiot, 39 U. S. (14 Pet.) 526, p. 537.

Under the authority of this act the President has power to lease all mineral lands reserved from public sale by the act of June 26, 1834 (4 Stat. 686).

Mineral Lands in Wisconsin, In re, 3 Op. Atty. Genl. 277, p. 278.

The President is not authorized by this act to lease lands containing mines of copper or silver, but this power of lease is limited to salt springs and lead mines and the necessary contiguous sections.

Lease of Mineral Lands, In re, 4 Op. Atty. Genl. 480, p. 490.

2 STAT. 470, FEBRUARY 29, 1806.

DISPOSAL OF SALINES AND SALT SPRINGS—OHIO.

AN ACT Making further provision for the disposal of the sections of land heretofore reserved.

Be it enacted, etc., That all the sections of land heretofore reserved for the future disposition of Congress, not sold or otherwise disposed of, and lying within either of the districts established for the disposition of public lands in the State of Ohio, with the exception of the section numbered 16 of the salt springs and lands reserved for the use of the same, shall be offered for sale in that district within which such reserved sections may respectively lie on the same terms and under the same regulations as other lands in the same district: * * *

3 STAT. 289, APRIL 19, 1816.

SALINES AND SALT SPRINGS GRANTED TO INDIANA.

AN ACT To enable the people of the Indiana Territory to form a constitutional State government, etc.

Be it enacted, etc., That the inhabitants of the Territory of Indiana be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.

* * * * * * *

Second. That all salt springs within the said Territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding, the whole, the quantity contained in 36 entire sections, shall be granted to the said State, for the use of the people of the said State, the same to be used under such terms, conditions, and regulations as the legislature of the said State shall direct: Provided, The said legislature shall never sell nor lease the same, for a longer period than 10 years at any one time. * * *

A. SALT SPRINGS.

1. GRANT TO STATE.
2. STATE'S RIGHT TO SALT SPRINGS AS AGAINST PATENTEE.

1. GRANT TO STATE.

By this act all salt springs within the Territory of Indiana, together with adjacent lands, were granted to the State.

Colorado, In re, 10 L. D. 222, p. 223.

By this act Congress granted to Indiana all the salt springs within the Territory and the land reserved for the use of the same, and such other lands as the President should deem necessary and proper for working such salt springs, not exceeding the quantity contained in 36 entire sections.

Alabama, In re, 21 L. D. 320, p. 322.

This act granted to the State of Indiana all salt springs within the Territory including lands necessary for the proper working of such springs.

New Mexico, In re, 35 L. D. 1, p. 4.

2. STATE'S RIGHT TO SALT SPRINGS AS AGAINST PATENTEE.

Where a State claims lands or salt springs within its territory reserved under this act, it must show that the land claimed by it comes within the description.

Indiana v. Miller, 13 Fed. Cas. 25, p. 26.

Lands claimed by a State as saline or salt springs, but which are not entered as reserved in the records of the Land Office, and after the Commissioner of the General Land Office has certified that the State has received all such lands within it which had been reserved for salt springs can not claim title to any such land as against a regular patentee of the United States.

Indiana v. Miller, 13 Fed. Cas. 25, p. 26.

3 STAT. 428, APRIL 18, 1814.

SALINES AND SALT SPRINGS GRANTED TO ILLINOIS.

AN ACT To enable the people of Illinois Territory to form a constitution and State government, etc.

Be it enacted, etc., That the inhabitants of the Territory of Illinois be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever. * * *

SEC. 6. And be it further enacted, That the following propositions be, and the same are hereby, offered to the convention of said Territory of Illinois, when formed, for their free acceptance or rejection, which if accepted by the convention, shall be obligatory upon the United States and the said State. * * *

Second. That all salt springs within such State, and the land reserved for the use of the same, shall be granted to the said State, for the use of the said State, and the same to be used under such terms, and conditions, and regulations, as the legislature of the said State shall direct: Provided, The legislature shall never sell nor lease the same for a longer period than 10 years at any one time.

A. SALT SPRINGS.

1. GRANT TO ILLINOIS.
2. EFFECT OF GRANT.
3. EXTENT OF GRANT.

1. GRANT TO ILLINOIS.

By this act Congress granted to Illinois all salt springs within the State and the land reserved for the use of the same.

Alabama, In re, 21 L. D. 320, p. 322.
New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

2. EFFECT OF GRANT.

This grant places the State of Illinois in regard to salt springs and reservations of land on the same ground previously occupied by the United States.

Salt Springs, In re, 1 Op. Atty. Genl. 420.

This act does not impair the discretion exercised by the President in withholding salt springs from sale.

Salt Springs, In re, 1 Op. Atty. Genl. 420.

3. EXTENT OF GRANT.

The grant of salt springs under this act, includes all such springs discovered and undiscovered to which the President may determine necessary to annex lands for the purpose of working them, but includes no others.

Salt Springs, In re, 1 Op. Atty. Genl. 420.

3 STAT. 489, MARCH 2, 1819.

SALINES AND SALT SPRINGS GRANTED TO ALABAMA.

AN ACT To enable the people of Alabama Territory to form a constitution and State government, etc.

Be it enacted, etc., That the inhabitants of the Territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they may deem proper; and that the said Territory, when formed into a State, shall be admitted into the union, upon the same footing with the original States, in all respects whatever. * * *

SEC. 6. * * * First. That the section numbered 16 in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools. Second. That all salt springs within the said Territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in 36 entire sections, shall be granted to the said State, for the use of the people of the said State, the same to be used, under such terms, conditions, and regulations, as the legislature of the said State shall direct: Provided, The said legislature shall never sell, nor lease the same for a longer term than 10 years at any one time.

A. STATE GRANTS.

1. MINERAL LANDS EXCEPTED—POLICY.
2. LANDS GRANTED WITH SALT SPRINGS.
3. ALABAMA GRANT.
   a. MINERAL LANDS GRANTED.
   b. EFFECT ON COAL LANDS.
4. INDEMNITY SELECTIONS BY ALABAMA.

1. MINERAL LANDS EXCEPTED—POLICY.

See 10 Stat. 244, p. 1257; 18 Stat. 474, p. 1279; 22 Stat. 487, p. 792; 23 Stat. 10, p. 1284.

It has been the policy of the General Government to exclude mineral lands from all grants then and thereafter made, and there is nothing found in the Alabama acts of

Congress showing any settled policy to repeal grants specifically made by Congress, and especially those of the character that were made by Congress to Alabama.

Alabama, In re, 6 L. D. 493, p. 495.

A grant to a State of sections 16 and 36 in each township for school purposes does not include mineral lands.

Alabama, In re, 6 L. D. 493, p. 495.
See Mullan v. United States, 118 U. S. 271, p. 276.
Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 174.

Mineral lands were, by the express provision of this act, excepted from the effect of the grant as to the sixteenth and thirty-sixth sections, and the State could only take the agricultural lands in such sections.

Alabama, In re, 6 L. D. 493.

2. LANDS GRANTED WITH SALT SPRINGS.

This act granted to Alabama all salt springs within the territory and any lands necessary and proper for the working of the same.

New Mexico, In re, 35 L. D. 1, p. 4.

In the grant of all salt springs within the territory of Alabama the words "and the lands reserved for the use of the same" mean the section of one mile square which includes each salt spring.

Alabama, In re, 21 L. D. 320, p. 322.

Between 1819 and 1837 Alabama was in continuous possession of salt springs, presumably all the springs that were then known, and of 640 acres of public lands with each spring under this congressional grant.

Alabama, In re, 21 L. D. 320, p. 322.

From the act of the State Legislature of Alabama approved February 23, 1866, and evidence of other acts on the part of the State it can not be assumed that other lands should be deemed necessary and proper for the working of salt springs which have been practically abandoned by the State for a period of 30 years, and the Land Department is not authorized to withdraw from settlement and entry 242 tracts of land which may furnish homesteads for as many citizens and their families under the guise that such lands are for the benefit of the State and necessary for the working of salt springs.

Alabama, In re, 21 L. D. 320, p. 324.

This State has not within 75 years at any time alleged that other lands were necessary or proper for the working of the salt springs under this grant and this protracted inaction warrants the presumption that the State has always deemed that any other lands were unnecessary for the working of such salt springs.

Alabama, In re, 21 L. D. 320, p. 323.

3. ALABAMA GRANT.

a. MINERAL LANDS GRANTED.

At the date of this act there was no legislation on the subject of mines or mineral lands except one statute of 1805 and one of 1807, the effect of which was substantially to render null and void every grant of salt springs and lead mines thereafter to be made, knowledge of which had been discovered previously to the purchase from the United States, but the enabling act for the State of Alabama did not reserve or except such lands from the grant to Alabama, and the State became invested with the legal title to every sixteenth section according to the surveys, irrespective of the mineral character of the land.

Alabama, In re, 6 L. D. 493, p. 496.

This act was not in any manner affected or modified by the coal-lands statute of March 3, 1883, and this act continues to apply to both kinds of lands, though the Government demands at private sale a greater price for some lands than it does for others.

Alabama, In re, 6 L. D. 493, p. 501.

The fact that the Government demands at private sale a greater price for some lands than it does for others is no reason why this act was not applicable to both kinds of lands.

Alabama, In re, 6 L. D. 493.

By virtue of this act Alabama became invested with the legal title to every sixteenth section irrespective of the character of the land, and in case of previous sale or disposal the right of indemnity already existed in precisely the same character of land, but the act did not authorize the selection of equivalent indemnity lands in lieu of the sixteenth section unless the lands had been sold or disposed of.

Alabama, In re, 6 L. D. 493.

The enabling acts of other States have indicated the lands within the State which should be reserved from sale and what lands were regarded as mineral and what should not be included within the sixteenth and thirty-sixth sections for school purposes, but these acts were special legislation and in no wise related to Alabama, and did not have the effect of limiting the rights of that State under this act.

Alabama, In re, 6 L. D. 493, p. 499.

b. EFFECT ON COAL LANDS.

Coal lands in Alabama were not reserved under this act any more than other mineral lands.

Alabama, In re, 6 L. D. 493, p. 500.

The fact that lands in Alabama have been reported to the General Land Office as being coal lands does not take them out of the provisions of this statute, and having been selected before they were sold the selection operates and gives the State the title to the land and leaves the remaining lands to be disposed of in accordance with the laws applicable to the subject.

Alabama, In re, 6 L. D. 493, p. 500.

4. INDEMNITY SELECTIONS BY ALABAMA.

See 22 Stat. 487, p. 792.

Under this act and up to the time of the passage of the general indemnity statutes the school lands granted to Alabama gave a valid title to any mineral lands, and the indemnity selections could be made upon the same character of lands.

Alabama, In re, 6 L. D. 493, p. 497.
See Cooper v. Roberts, 59 U. S. (18 How.) 173.

By this act Alabama was invested with the legal title to every sixteenth section of land, irrespective of its character, with the right to select indemnity land in case such section had been disposed of, and this right is in nowise affected or abridged by the act of March 3, 1883 (22 Stat. 487), relating to coal and iron lands, and it did not operate to reserve such lands from indemnity school selection if such selection was made by the State before such land was offered for public sale, and the right of the State to select indemnity lands, though mineral in character and though previously reported as containing coal and iron, must be recognized.

Alabama, In re, 6 L. D. 493

There is nothing to show that the State is not entitled under this act to select any land which it might have originally selected under the act.

Alabama, In re, 6 L. D. 493.

Subsequent statutes reserving and excepting mineral lands do not declare that mineral lands located in a given State may not be selected in accordance with the terms and provisions of the original enabling act, and these statutes can not be construed as taking from Alabama her special and specific rights conveyed by a special act prior to the passage of any of these latter enactments upon the subject of mineral lands.

Alabama, In re, 6 L. D. 493.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167.
Mullan v. United States, 118 U. S. 271.

23 STAT. 12, APRIL 23, 1884.

ALABAMA UNIVERSITY LANDS.

AN ACT To increase the endowment of the University of Alabama from the public lands in said State.

Be it enacted, etc., That 46,080 acres of the public lands in Alabama are hereby granted to the State of Alabama, in addition to the lands reserved to said State by the acts approved April 20, 1818, and March 2, 1819, for the benefit of the University of Alabama, to be applied, as far as may be necessary, to the erection of suitable buildings for said university and to the restoration of the library and scientific apparatus heretofore destroyed by fire, such application to be made in such manner as the legislature of said State may direct or may empower the trustees of said university to direct: Provided, That the State of Alabama shall pay the expenses of agents appointed by the governor thereof to select such lands, to be reimbursed out of the proceeds of the sales thereof.

* * * * * * *

SEC. 3. That the provisions of this act shall not apply to any legal subdivision of land to which the right of homestead entry or preemption shall have attached in favor of any person who is entitled to such homestead and preemption entries and who is occupying and claiming such subdivision of the public lands in Alabama at the time when such selections are approved by the Secretary of the Interior. And in cases where it is found that such claims are superior to the rights of the State of Alabama herein granted, the said State may select other lands in lieu thereof, and in like quantity, elsewhere in the said State, from the public lands of the United States, so as to make up, as nearly as may be, the total number of acres of land granted in this act to said State.

SEC. 4. That when the selection of said lands are so made, and are approved by the Secretary of the Interior, the title to the same shall vest in the State of Alabama, to and for the use and benefit of said University of Alabama. * * *

A. ALABAMA UNIVERSITY GRANT.

1. RIGHT TO SELECT MINERAL LANDS.

Prior to the enactment of this statute there were no express provisions reserving from any and all dispositions the mineral lands of the United States and disclosing a public policy applicable to all grants and to withhold them therefrom, and this statute bears no evidence of such public policy.

Alabama, In re, 6 L. D. 493, p. 502.

Under this act the State has the right to select mineral lands as well as agricultural lands and the grant in this respect is not limited by other statutes reserving to the United States its mineral land.

Alabama, In re, 6 L. D. 493, p. 502.

3 STAT. 545, MARCH 6, 1820.

SALINES AND SALT SPRINGS GRANTED TO MISSOURI.

AN ACT To authorize the people of Missouri Territory to form a constitution and State government, etc.

Be it enacted, etc., That the inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon an equal footing with the original States, in all respects whatsoever. * * *

SEC. 6. And be it further enacted, * * * Second. That all salt springs, not exceeding 12 in number, with six sections of land adjoining to each, shall be granted to the said State for the use of said State, the same to be selected by the legislature of the said State, on or before the first day of January, in the year 1825; and the same, when so selected, to be used under such terms, conditions, and regulations, as the legislature of said State shall direct: Provided, That no salt spring, the right whereof now is or hereafter shall be, confirmed or adjudged to any individual or individuals, shall, by this section, be granted to the said State: And provided also, That the legislature shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of Congress.

A. SALT SPRINGS.

1. GRANT TO MISSOURI.

This act granted to the State of Missouri all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Missouri to form a State, provided that no salt spring, the right whereof now is, or hereafter shall be confirmed or adjudged to any individual or individuals, should by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

In granting the salt springs to the State of Missouri, Congress thought it proper that no salt springs, the right whereof now is or shall be confirmed or adjudged to any individual, shall pass under the grant to the State. But the purpose of this was only to save salt springs claimed under the French treaty, and it could not confer the salt springs not thus claimed, because all entry thereon was unlawful on account of previous reservations.

Morton v. Nebraska, 88 U. S. 660, p. 673.

This statute intends to reserve salines, and the purpose of reserving them was to preserve them for the use of the future States. But no State has been organized without a grant of a certain number of salt springs. In the earlier grants all the salt springs within

the boundaries of the State were given, but since the admission of Missouri the number has been limited to 12, and this number, with a certain quantity of contiguous land, were granted to Nebraska on her admission. Congress in this act assumed that the springs had been reserved from sale.

Morton v. Nebraska, 88 U. S. 660, p. 672.

3 STAT. 767, MARCH 3, 1823.

SALINES AND SALT SPRINGS GRANTED TO MISSOURI.

AN ACT Concerning the lands to be granted to the State of Missouri, etc.

Be it enacted, etc., * * *

SEC. 2. And be it further enacted, That in all cases in which the General Assembly of the State of Missouri has selected, or shall hereafter select, a salt spring for the use of the State according to the provisions of an act of Congress of the 6th of March, 1820, and the six sections of unappropriated lands can not be found adjoining to such spring, agreeably to the provisions of said act, the deficiency shall be supplied by the selection of other sections equivalent thereto, and not farther distant than 6 miles therefrom, of unappropriated lands of the United States in that State and as nearly adjoining to such spring as may be, shall be subject to the selection of the legislature of the State for the use thereof; and such sections, when so selected and located, are hereby granted according to the provisions of said act; and authenticated copies of the selections made by the register and receiver, under the provisions of this act, shall be furnished the State, and returns transmitted to the Secretary of the Treasury, of the selections now made, and of those to be made, immediately after such selections shall have been made, either by the register and receiver, or by the legislature of the State.

4 STAT. 79, DECEMBER 22, 1824.

SALE OF SALINES AND SALT SPRINGS IN OHIO.

AN ACT To authorize the legislature of Ohio to sell certain tracts of land, etc.

Be it enacted, etc., That the Legislature of the State of Ohio shall be, and is hereby, authorized and empowered to cause to be sold and conveyed in such manner, and on such terms and conditions as said legislature shall by law direct, the following tracts of land heretofore granted to said State for the use of the people thereof, to wit, so much of the 6-mile reservation, including the salt springs, commonly called the Sciota Salt Springs, as remains unsold; the salt springs near the Muskingum River, and in the military tract, with the sections of land which include the same; the proceeds thereof to be applied to such literary purposes as said legislature may hereafter direct; and to no other use, intent, or purpose whatsoever.

4 STAT. 305, MAY 24, 1824.

SALE OF SALINES AND SALT SPRINGS—ILLINOIS.

AN ACT To authorize the legislature of Illinois to sell a part of the land reserved and granted to said State for the use of the Ohio Saline.

Be it enacted, etc., That the Legislature of the State of Illinois shall be, and is hereby, authorized and empowered to cause to be

sold and conveyed in such manner, and on such terms and conditions, as said legislature shall by law direct, such part or parts of the tract of land reserved and granted to said State, for the use and support of the salt works, known by the name of the Ohio Saline, in the county of Gallatin, in the said State, and to apply the proceeds of such sale to such objects as the said legislature may by law hereafter direct: Provided, That the legislature shall not sell and convey more than 30,000 acres of the land reserved and granted for the use of the saline aforesaid.

5 STAT. 56, JUNE 23, 1836.

SALINES AND SALT SPRINGS GRANTED TO ARKANSAS.

AN ACT Supplementary to the act entitled "An act for the admission of the State of Arkansas into the Union," etc.

Be it enacted, etc., * * *.

Second. That all salt springs not exceeding 12 in number, with six sections of land adjoining to each, shall be granted to said State, for the use of said State, the same to be selected by the general assembly thereof on or before the 1st day of January, 1840; and the same, when so selected, to be used under such terms, conditions, and regulations, as the general assembly of the said State shall direct: Provided, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: And provided also, That the general assembly shall never sell or lease the same, at any one time, for a longer period than 10 years, without the consent of Congress; and that nothing contained in the act of Congress entitled "An act authorizing the governor of the Territory of Arkansas to lease the salt springs in said Territory, and for other purposes," or in any other act, shall be construed to give to the said State any further or other claim whatsoever, to any salt springs or lands adjoining thereto, than to those hereby granted.

* * * * * * *

See 1194.

A. SALT SPRINGS.

1. GRANT TO ARKANSAS.

This act granted to the State of Arkansas all salt springs not exceeding 12 in number, with six sections of adjoining or contiguous land, to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Arkansas to form a state, provided that no salt spring, the right whereof now is or hereafter shall be confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

5 STAT. 59, JUNE 23, 1836.

SALINES AND SALT SPRINGS GRANTED TO MICHIGAN.

AN ACT Supplementary to the act entitled "An act to establish the northern boundary line of the State of Ohio," etc.

Be it enacted, etc., That in lieu of the propositions submitted to the Congress of the United States by an ordinance passed by the

convention of delegates at Detroit, assembled for the purpose of making a constitution for the State of Michigan, which are hereby rejected; and that the following propositions be and the same are hereby offered to the Legislature of the State of Michigan for their acceptance or rejection, which, if accepted, under the authority conferred on the said legislature by the convention which framed the constitution of the said State, shall be obligatory upon the United States. * * *

Fourth. That all salt springs within the State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use, the same to be selected by the legislature thereof, on or before the 1st of January, 1840; and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the said State shall direct: Provided, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: And provided, also, That the general assembly shall never sell or lease the same at any one time for a longer period than 10 years, without the consent of Congress.

A. SALT SPRINGS.

1. GRANT TO MICHIGAN.

This act granted to the State of Michigan all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Michigan to form a State, provided that no salt spring, the right whereof now is, or hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

5 STAT. 789, MARCH 3, 1845.

SALINES AND SALT SPRINGS GRANTED TO IOWA AND FLORIDA.

AN ACT Supplemental to the act for the admission of Iowa and Florida.

Be it enacted, etc., That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere in the United States.

* * * * * * *

SEC. 6. And be it further enacted, That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the 1st day of November, 1844, by the convention of delegates at Iowa City, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the Legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

* * * * * * *

Fourth. That all salt springs within the State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: Provided, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: And provided, also, That the general assembly shall never lease or sell the same, at any one time, for a longer period than 10 years, without the consent of Congress.

A. SALT SPRINGS.

1. GRANT TO IOWA.
2. GRANT TO FLORIDA.

1. GRANT TO IOWA.

This act granted to the State of Iowa all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

2. GRANT TO FLORIDA.

This act granted to the State of Florida all salt springs not exceeding 12 in number with six sections of adjoining or contiguous lands to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Florida to form a State provided that no salt spring, the right whereof now is, or hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

9 STAT. 56, AUGUST 6, 1846.

SALINES AND SALT SPRINGS GRANTED TO WISCONSIN.

AN ACT To enable the people of Wisconsin Territory to form a constitution and State government, etc.

Be it enacted, etc. * * *

SEC. 4. And be it further enacted, etc., That from and after the admission of the State of Wisconsin into the Union, in pursuance of this act, the laws of the United States which are not locally inapplicable shall have the same force and effect within the State of Wisconsin as elsewhere within the United States; * * *

SEC. 7. And be it further enacted, etc., * * * Fourth. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the State for its use; the same to be selected by the legislature thereof, within one year after the admission of said

State; and when so selected, to be used or disposed of on such terms, conditions, and regulations, as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State.

A. SALT SPRINGS.

1. GRANT TO WISCONSIN.

This act granted to the State of Wisconsin all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Wisconsin to form a State, provides that no salt spring, the right whereof now is or hereafter shall be confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

10 STAT. 5, MAY 4, 1852.

SALINES AND SALT SPRINGS—WISCONSIN.

AN ACT To extend the time for selecting lands granted to the State of Wisconsin for saline purposes.

Be it enacted, etc., That the time for selecting lands for saline purposes, granted to the State of Wisconsin by virtue of the fourth subdivision of the seventh section of an act entitled "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union," approved August 6, 1846 (9 Stat. 56), be, and the same is hereby extended to January 1, 1854; and the land so selected previous to the day last mentioned, shall be granted to said State for the same purposes, on the same conditions, and with like effect, as if the same had been selected and confirmed within the time limited by the act above mentioned.

10 STAT. 7, MAY 27, 1852.

SALE OF SALINES AND SALT SPRINGS TO IOWA.

AN ACT To relinquish to Iowa lands reserved for salt springs.

Be it enacted, etc., That the 12 salt springs, and six sections of land adjoining or contiguous thereto, the use of which was granted to the State of Iowa, by the act entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, shall be, and the same are hereby granted in fee simple, to the said State of Iowa, to be disposed of, and the proceeds to be applied as the legislature of that State shall direct: Provided, That nothing in this act contained shall be so construed as to interfere with the rights of third parties: And provided further, That if any of the lands which have been selected by the authorities of the State of Iowa, under the act aforesaid, shall have been legally claimed by preemption or otherwise, the State shall be authorized to select other lands in lieu thereof.

10 STAT. 172, p. 179, MARCH 2, 1853.

MINERAL LANDS RESERVED FROM GRANT TO WASHINGTON.

AN ACT To establish the territorial government of Washington.

Be it enacted, etc., That from and after the passage of this act, all that portion of Oregon Territory lying and being (here describing) be organized into and constitute a temporary government by the name of the Territory of Washington.

* * * * * * *

SEC. 20. And be it further enacted, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market or otherwise disposing thereof, sections numbered 16 and 36 in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections 16 and 36, or either or any of them, shall be occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid.

* * * * * * *

A. GRANT TO WASHINGTON—MINERAL LANDS RESERVED.

The mineral land in sections 16 and 36 granted to Washington Territory for school purposes was reserved from the grant for the Territory and designed for disposition under the mining statutes.

Norager, In re 10 C. L. O. 54.

10 STAT. 244, MARCH 3, 1853.

MINERAL LANDS RESERVED FROM GRANT TO CALIFORNIA.

AN ACT To provide for the survey of the public lands in California, etc.

Be it enacted, etc., * * *

SEC. 3. And be it further enacted, etc. * * * Provided, That none other than township lines shall be surveyed when the lands are mineral or are deemed unfit for cultivation; and no allowance shall be made for such lines as are not actually run and marked in the field, and were actually necessary to be run.

This provision was repealed by section 16 of the act of July 9, 1870, 16 Stat. 217.

* * * * * * *

SEC. 6. That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections 16 and 36, which shall be and hereby are granted to the State for purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title and the mineral lands, shall be subject to the preemption laws of September 4, 1841, with all the exceptions, conditions, and limitations therein, except as herein otherwise provided; * * *

SEC. 7. That where any settlement, by the erection of a dwelling house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved on the 20th of May, 1826, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships, not before provided for," and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected.

SEC. 8. That the public lands, not being mineral lands, occupied as towns or villages, shall not be subdivided, or subject to sale, or to be appropriated by settlers, under the provisions of this act; but the whole of such lands, whether settled upon before or after the survey of the same, shall be subject to the provisions of the act entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May 23, 1844, except such towns as are located on or near mineral lands, the inhabitants of which shall have the right of occupation and cultivation only until such time as Congress shall dispose of the same; nor shall any lands specially reserved for public uses be appropriated under the provisions of this act for a military post, or within 1 mile of such post, or on any other lands reserved by competent authority; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands.

* * * * * * *

SEC. 12. That the quantity of the two entire townships, or 72 sections, shall be and the same is hereby granted to the State of California for the use of a seminary of learning, said lands to be selected by the Governor of the State, or any person he may designate for that purpose, in legal subdivisions of not less than a quarter section of any of the unsold, unoccupied, and unappropriated public lands therein, subject to the approval of the Secretary of the Interior, and to be disposed of as the legislature shall direct: Provided, however, That no mineral lands, or lands reserved for any public purpose whatever, or lands to which any settler may be entitled under the provisions of this act, shall be subject to such selection.

SEC. 13. That there shall be and is hereby granted to the State of California the quantity of 10 entire sections of land, for the purpose of erecting the public buildings of that State, said lands to be selected by the Governor, or any persons he may designate, in legal subdivisions of not less than a quarter section of any of the unsold, unoccupied, and unappropriated public lands in that State, and subject to the approval of the Secretary of the Interior: Provided, however, That none of said selections shall be made of mineral lands or lands reserved for any public purpose whatever, or lands to which any settler may be entitled, under the provisions of this act.

See 5 Stat. 657, p. 1375; 14 Stat. 218, p. 1090.

A. CONSTRUCTION AND APPLICATION OF ACT.
B. GRANT TO CALIFORNIA.

A. CONSTRUCTION AND APPLICATION OF ACT.

This section (6) is construed as excepting lands appropriated under the authority of the act, or reserved by competent authority, as well as lands claimed under any foreign grant or title, and excepting also foreign lands.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 109.
See Sherman v. Buick, 45 Cal. 656.
California, In re, Copp's Min. Lands 224.

The words "reserved for public uses" refer solely to reservations made for the purpose of the General Government.

California, In re, Copp's Min. Lands 224, p. 225.

This act has no reference to mineral lands in the State of New Mexico.

Lockhart v. Johnson, 181 U. S. 516, p. 525.

The purpose of this act was to provide for the survey and sale of the public lands and the right of preemption to the settlers, but the mineral lands are expressly excepted from the right of preemption and from public sale.

Mining Co. v. Con. Min. Co., 102 U. S. 167.
Mullan v. United States, 118 U. S. 271.
Alabama, In re, 6 L. D. 493, p. 494.

Congress intended to reserve all mineral lands from the operation of this act, and no mineral lands in sections 16 and 36 can be claimed by virtue of this act.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.

B. GRANT TO CALIFORNIA.

1. MINERAL LANDS RESERVED.
2. SCHOOL GRANTS.
   a. MINERAL LANDS EXCEPTED.
   b. IMPROVED LANDS EXCEPTED.
   c. TIME OF TAKING EFFECT—SURVEY.
3. SEMINARY PURPOSES—MINERAL LANDS EXCEPTED.
4. SELECTIONS FOR PUBLIC BUILDINGS—MINERAL LANDS EXCEPTED.
5. COAL LANDS RESERVED.
6. SELECTION OF LIEU LANDS—EFFECT.
7. PROOF OF MINERAL CHARACTER OF LAND.
8. SUBSEQUENT DISCOVERY OF MINERALS—EFFECT.

1. MINERAL LANDS RESERVED.

Mineral lands did not pass to the State of California under this act.

Colorado, In re, Copp's Min. Lands 341, p. 342.
Hogden, In re, 1 C. L. O. 135.

This section (6) excepts the mineral lands from the lands subject to the preemption laws.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.
California, In re, Copp's Min. Lands 340.

Under this section no person can obtain the benefits of the act by a settlement or location on mineral lands.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.

2. SCHOOL GRANTS.

a. MINERAL LANDS EXCEPTED.

See 14 Stat. 218, p. 1090.

The grant of lands under this statute for school purposes does not include mineral lands.

Mining Co. v. Consol. Min. Co., 102 U. S. 167, p. 169.
California, In re, 22 L. D. 402.
See Deffeback v. Hawke, 115 U. S. 392, p. 401.
United States v. San Pedro, etc., Co., 4 N. Mex. 225, p. 294.

Lands well known to be valuable for mineral or well known as mineral lands when surveyed do not pass to the State under the school-section grant.

Mining Co. v. Consol. Min. Co., 102 U. S. 167, p. 175.
United States v. Mullan, 10 Fed. 785, p. 787.
Alabama, In re, 6 L. D. 493, p. 494.
Pereira v. Jacks, 15 L. D. 273.
California v. Poley, 4 C. L. O. 18.

This act extends the statute of 1841 over all public lands in California, excepting sections 16 and 36 granted to the State for school purposes and excepting also the mineral lands.

United States v. Mullan, 10 Fed. 785, p. 787.

While there is no express exception of mineral lands from the operation of the grant of sections 16 and 36 to California for school purposes, yet Congress did not intend to depart from its uniform policy, and mineral lands were accordingly excluded from the grant if known to be so when the survey was made and did not pass to the State under the grant.

Miner, In re, 9 L. D. 408, p. 411.

No mineral lands were granted by this act.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101.

b. IMPROVED LANDS EXCEPTED.

This section excepts from the grant to the State lands sections 16 and 36 upon which a settlement of any kind had been made prior to survey, including mining locations.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 110.
See California, In re, Copp's Min. Lands 224.

This section gives the inhabitants of towns located on or near mineral lands the right of occupation and cultivation only until such time as Congress shall dispose of the same, and does not in its terms dispose of such mineral lands, but very carefully reserves such mineral lands from its operation.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands, 101, p. 111.

c. TIME OF TAKING EFFECT—SURVEY.

The grant to the State of California of sections 16 and 36 for school purposes took effect upon specific tracts only when the same were surveyed and not before, and no mineral lands passed to the State by the grant.

Delaney v. Thomas, 2 C. L. O. 50.
California v. Poley, 4 C. L. O. 18.

The completion of the survey must be taken as the date when the grant of land to California as school land takes effect.

Pereira v. Jacks, 15 L. D. 273, p. 274.
Virginia Lode, In re, 7 L. D. 459.
Townsite of Silver Cliff v. Colorado, Copp's Min. Lands, 261.

Title to lands granted under this act for school purposes does not vest in the State, as against mineral claimants, until a survey has been made.

Keystone Consol. Min. Co., v. California, Copp's Min. Lands 101, p. 105.
See Terry v. Megerle, 24 Cal. 610.
Grayson v. Knight, 27 Cal. 507
Middleton v. Lowe, 30 Cal., 596.
California, In re, Copp's Min. Lands 224.

Under this section none but township lines should be surveyed where the lands are mineral, and if no title to sections 16 and 36 could vest in the State until survey, then no title to mineral lands could vest, as such lands were not permitted to be surveyed under this section.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.

Congress intended by this act that no surveys should be made of mineral lands until it further ordered, and there could be no sale, preemption, or other title acquired in mineral lands until Congress provided for their disposition.

See Alabama, In re, 6 L. D. 493, p. 494.
Mining Co. v. Consolidated Min. Co., 102 U. S. 167.
Mullan v. United States, 118 U. S. 271.

The title to sections 16 and 36 for school purposes vested in the State at the date of the survey, May 19, 1866, and a mining company could acquire no rights in any such sections under the mining act approved July 26, 1866 (14 Stat. 251).

Water & Min. Co. v. Bugbey, 96 U. S. 165, p. 167.

Congress was so careful to protect mineral lands from sale and preemption that surveyors were, by this section, forbidden to extend their surveys from such mineral lands, and the purpose of this was to prevent such lands from sale, preemption, or other title acquired in mineral lands, and reserve them from disposal.

Alabama, In re, 6 L. D. 493, p. 494.

3. SEMINARY PURPOSES—MINERAL LANDS EXCEPTED.

A grant of land for use of a seminary, under this section, expressly excepted mineral lands.

California v. Poley, In re, 4 C. L. O. 18.
See Alabama, In re, 6 L. D. 493.

The mineral lands are exempted from the operation of the grants of 72 sections for the use of a seminary of learning and the grant of 10 sections for the purpose of public buildings.

Higgins v. Houghton, 25 Cal. 252, p. 255.

4. SELECTIONS FOR PUBLIC BUILDINGS—MINERAL LANDS EXCEPTED.

This section gives the State the right to select 10 sections for public building purposes, but expressly provides that none of such selections shall be made of mineral lands.

Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.

5. COAL LANDS RESERVED.

These acts granting the sixteenth and thirty-sixth sections of public lands to California for school purposes expressly reserved all coal lands from the grant.

Mullan v. United States, 118 U. S. 271, p. 276.
See California, In re, 22 L. D. 402.

Coal lands are mineral lands and do not pass to the State under this act.

Hogden, In re, 1 C. L. O. 135.
Hogden v. California, Sickels' Min. L. & D. 405.
See Mullan v. United States, 118 U. S. 271.
Alabama, In re, 6 L. D. 493.
Colorado, In re, Copp's Min. Lands 341, p. 342.

6. SELECTION OF LIEU LANDS—EFFECT.

Granting certain lands to the State of California did not give the State a vested right to select lands in lieu of sections 16 and 36, so that the right to select could not be withdrawn by the Government from any particular lands or claims of lands at any time before selection was actually made.

United States v. Mullan, 10 Fed. 785, p. 790.
Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101, p. 112.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167.
Alabama, In re, 6 L. D. 493.

This act provides that when settlement has been made on lands afterwards surveyed and falling within sections 16 and 36, other lands shall be selected in lieu thereof; but no person shall obtain the benefit of this act by a settlement or location on mineral lands.

United States v. Mullan, 10 Fed. 785, p. 787.

Under this statute mineral lands can not be legally selected in lieu of school sections lost or otherwise disposed of.

United States v. Curtner, 38 Fed. 1, p. 10.
Swank v. California, 27 L. D. 411, p. 413.
McQuiddy v. California, 29 L. D. 181, p. 183.

Under this grant the State of California is not entitled to select and locate lieu lands for such portions of sections 16 and 36 as are mineral in character.

California, In re, Copp's Min. Lands 224, p. 225.
See Keystone Consol. Min. Co. v. California, Copp's Min. Lands 101.

Lands returned as mineral can not be selected as school indemnity lands until after due notice of intention to make the application and affirmative proof as to the non-mineral character of the land.

California, In re, 22 L. D. 402, p. 403.

Where it appears that the State entered other land in lieu of the land in dispute, it sufficiently shows that the State, by taking indemnity land, recognized the mineral character of the land in controversy

Pereira v. Jacks, 15 L. D. 273, p. 275.

In the grant of the sixteenth and thirty-sixth sections to California for school purposes with the right of indemnity selection mineral lands were expressly excepted from the operation of the grant.

California, In re, 22 L. D. 402.

Lands chiefly valuable for gypsum or petroleum deposits contained therein are not subject to selection as indemnity under a school-land grant.

McQuiddy v. California, 29 L. D. 181, p. 183.

The law governing the right of a State to indemnity school land is in every respect similar to the law governing the right of a railroad company to select indemnity land, and prior to such indemnity selection, if the land is mineral in character, it is open to exploration and purchase under the mining statutes.

Swank v. California, 27 L. D. 411, p. 413.
McQuiddy v. California, 29 L. D. 181, p. 183.
California, In re, 41 L. D. 592, p. 596.

7. PROOF OF MINERAL CHARACTER OF LAND.

The affirmative proof required by the mining regulations under this act should be ample and may consist of the affidavit of an applicant supported by the affidavits of two or more persons whose acquaintance with the character of the land is derived from a careful personal examination of each ten-acre tract thereof.

California, In re, 22 L. D. 402, p. 403.

The fact that mineral had been discovered on land and that further expenditures had been made in the development of the same, considered together with the admission of the State relative to the mineral character of the land, and considered also together with the fact that the evidence shows the land to have but little, if any, agricultural value, is sufficient to overcome the agricultural return and to show that the land has a greater value for mineral than for agricultural purposes.

McQuiddy v. California, 29 L. D. 181, p. 184.

8. SUBSEQUENT DISCOVERY OF MINERALS—EFFECT.

The sale or patent of lands not known to be mineral at the time is not affected by the subsequent discovery of their mineral character, and this will not divest the title which has already passed.

Miner, In re, 9 L. D. 408, p. 409.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 175.
Colorado, In re, 6 L. D. 412.
Virginia Lode, In re, 7 L. D. 459.
California v. Poley, 4 C. L. O. 18.
Dartt, In re, 5 C. L. O. 178.
Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.

Title vests under this act at the date of the completion of the official survey, and the subsequent discovery of the mineral character of the lands will not divest the State's title.

Central Pac. R. Co. v. Valentine, 11 L. D. 238, p. 243.

Under this grant to the State of sections 16 and 36, the State has power to sell and convey such sections by valid title, though containing minerals.

Higgins v. Houghton, 25 Cal. 252, p. 258.

10 STAT. 346, AUGUST 3, 1854.

TITLE VESTED IN STATES.

AN ACT To vest in the several States and Territories the title in fee of the lands which have been or may be certified to them.

Be it enacted, etc., That in all cases where lands have been, or shall hereafter be, granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor; the lists of such lands which have been, or may hereafter be certified by the Commissioner of the General Land Office, under the seal of said office, either as originals, or copies of the originals or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

10 STAT. 597, DECEMBER 15, 1854.

SALINES AND SALT SPRINGS GRANTED TO WISCONSIN.

AN ACT To relinquish to the State of Wisconsin the lands reserved for salt springs therein.

Be it enacted, etc., That in lieu of the "12 salt springs, with six sections of land adjoining to each," heretofore granted to the State of Wisconsin for its use by the fourth clause of the seventh section of the act entitled "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union," approved August 6, 1846 (9 Stat. 56), there be and hereby is granted to the said State of Wisconsin, to be selected by the legislature of said State out of any public lands subject to private entry, and to be sold in such manner as the legislature may direct, for the benefit and in aid of the university of said State, and for no other purpose whatever, 72 sections of land: Provided, That any selections of land heretofore made under the act entitled "An act to extend the time for selecting land granted to the State of Wisconsin, for saline purposes," approved May 4, 1852 (10 Stat. 5), and which shall not have been sold by the United States, and is not legally claimed by preemption, or otherwise, shall be, and hereby are granted and confirmed to said State for the use of the university of said State, as a part of the 72 sections hereby granted.

11 STAT. 9, MAY 15, 1856.

GRANT TO IOWA IN AID OF RAILROADS.

AN ACT Making a grant of lands to Iowa in alternate sections to aid in the construction of certain railroads in said State.

Be it enacted, etc., That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads, * * * And provided further, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act. * * *

A. GENERAL RESERVATION—SALINE LANDS INCLUDED.

The proviso of this grant recognizes the reservations made by all acts of Congress, and it is therefore construed as reserving and accepting all saline lands from the grant.

Horton, In re, 9 C. L. O. 121, p. 122.
See Morton v. Nebraska, 88 U. S. 660.

11 STAT. 15, MAY 17, 1856.

GRANT TO ALABAMA AND FLORIDA IN AID OF RAILROADS.

AN ACT Granting public lands, in alternate sections, to the States of Florida and Alabama, to aid in the construction of certain railroads in said States.

Be it enacted, etc., That there be and is hereby granted to the State of Florida, for the purpose of aiding in the construction of railroads, * * * And provided further, That any and all lands

heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads or branch through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States.

* * * * * * *

SEC. 6. And be it further enacted, That a similar grant of alternate sections of public land is hereby made to the State of Alabama, to aid in the construction of a railroad from Montgomery, in said State, to the boundary line between Florida and Alabama, in the direction of Pensacola, and to connect with the road from Pensacola to said line, upon the same terms and conditions in all respects as are hereinbefore prescribed for the grant to Florida.

A. RAILROAD GRANTS IN ALABAMA AND FLORIDA.

1. MINERALS AND PHOSPHATES EXCEPTED.

Mineral lands did not pass with the grant, though not expressly excluded.

Florida Central & Peninsular R. Co., In re, 26 L. D. 600.
Utah v. Allen, 27 L. D. 53, p. 55.

Lands containing valuable deposits of phosphate are excepted from this grant.

Florida Central & Peninsula R. Co., In re, 26 L. D. 600, p. 601.
See Richter v. Utah, 27 L. D. 95, p. 98.

Railroad grants of land in mineral regions uniformly contain a reservation of mineral lands.

Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 602.
Overruling Tucker v. Florida, R., etc., Co., 19 L. D. 414, p. 415.

16 STAT. 45, APRIL 10, 1869.

GRANT TO ALABAMA IN AID OF RAILROADS.

AN ACT To renew certain grants of land to the State of Alabama.

Be it enacted, etc., That so much of the grant of lands made to the State of Alabama by the act of Congress approved June 3, 1856, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State" (11 Stat. 17), as were granted to assist in the building of railroads "from near Gadsden to some point on the Alabama and Mississippi State line, in a direction to the Mobile & Ohio Railroad, with a view to connect with the said Mobile & Ohio Railroad" and "from Gadsden to connect with the Georgia & Tennessee and Tennessee line of railroads through Chattooga, Wills, and Lookout valleys," is hereby revived and renewed, subject to all the conditions and restrictions contained in the act referred to, and subject to the further limitation that if either of the said railroads is not completed within three years from the passage of this act no further sale shall be made for the benefit of such railroad, and the lands unsold shall revert to the United States: Provided, That the lands granted by

the act hereby revived, except mineral lands, shall be sold to actual settlers only in quantities not greater than one-quarter section to any one purchaser, and for a price not exceeding $2.50 per acre.

NOTE.—Original act (11 Stat. 17) not taken.

11 STAT. 166, FEBRUARY 26, 1857.

SALINES AND SALT SPRINGS GRANTED TO MINNESOTA.

AN ACT To authurize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission in the Union on an equal footing with the original States.

Be it enacted, etc., That the inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits, to wit: [here describing] * * *

SEC. 5. And be it further enacted, That the following propositions be, and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit: * * *

Fourth. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be at each, shall be granted to said State for its use; the same to be selected by the governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said State.

Fifth. That 5 per cent of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct. * * *

A. GRANT TO MINNESOTA.

1. SALT SPRINGS INCLUDED—EXCEPTIONS.

This act granted to Minnesota all the salt springs and the lands reserved for the use of the same.

Hall v. Litchfield, 2 C. L. O. 179.

This act granted to the State of Minnesota all salt springs not exceeding 12 in number with six sections of adjoining or contiguous lands to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.

This act, while authorizing the people of Minnesota to form a State, provided that no salt spring, the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

11 STAT. 269, MAY 4, 1858.

SALINES AND SALT SPRINGS GRANTED TO KANSAS.

AN ACT For the admission of the State of Kansas into the Union.

Be it enacted, etc., That the State of Kansas be, and is hereby, admitted into the Union on an equal footing with the original States, in all respects whatever. * * *

Fourth. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the Governor thereof, within one year after the admission of said State; and, when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature may direct: Provided, That no salt spring or land the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall by this article be granted to said State.

Fifth. That 5 per cent of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, as the legislature shall direct: Provided, The foregoing propositions herein offered are on the condition that said State of Kansas shall never interfere with the primary disposal of the lands of the United States, or with any regulations which Congress may find necessary for securing the title in said soil to bona fide purchasers thereof, and that no tax shall be imposed on lands belonging to the United States, and that in no case shall nonresident proprietors be taxed higher than residents.

Sixth. And that said State shall never tax the lands or property of the United States in that State. * * *

A. GRANT TO KANSAS.

1. SALINES AND SALT SPRINGS.

This act granted to Kansas all the salt springs and the lands reserved for the use of the same.

Hall v. Litchfield, 2 C. L. O. 179.

This act granted to the State of Kansas all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.

This act, while authorizing the people of Kansas to form a State, provided that no salt spring the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

11 STAT. 383, FEBRUARY 14, 1859.

SALINES AND SALT SPRINGS GRANTED TO OREGON.

AN ACT For the admission of Oregon into the Union.

Be it enacted, etc., That Oregon be, and she is hereby, received into the Union on an equal footing with the other States in all respects whatever, with the following boundaries: (Here describing).

* * * * * * *

SEC. 4. And be it further enacted, That the following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit: * * *

Fourth. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State.

Fifth. That 5 per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct: * * *

A. GRANT TO OREGON.

1. SALINES AND SALT SPRINGS.
2. SELECTIONS BY STATE—TIME OF MAKING.
3. SELECTION OF LIEU LANDS—PROOF OF MINERAL CHARACTER.

1. SALINES AND SALT SPRINGS.

This act granted to Oregon all the salt springs and all lands reserved for the use of the same.

Hall v. Litchfield, 2 C. L. O. 179.

This act was a grant to the State of Oregon of certain salt springs and lands in connection therewith, and operated to pass the title to a certain number of salt springs and prescribed the amount of land in connection with each, but did not attach to any specific salt springs or land until selection was made, and the act does not in any way limit the power of Congress to provide other methods of disposing of lands of the class contemplated, so long as the same remained unselected.

Oregon v. Jones, 24 L. D. 116, p. 118.

This act granted to the State of Oregon all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 5.

This act, while authorizing the people of Oregon to form a State, provided that no salt spring the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

The Oregon enabling act, while excepting mineral lands and salines, says nothing about town sites.

Marlin v. T'Vault, 1 Oreg. 77, p. 85.

2. SELECTIONS BY STATE—TIME OF MAKING.

The provisions of this act as to the time within which a State shall make its selections of salt springs and adjacent lands are directory and not mandatary.

Oregon v. Jones, 24 L. D. 116, p. 117.

Under this act the selection of salt springs must be made within one year after the admission of the State.

Oregon v. Jones, 24 L. D. 116, p. 118.

Under this statute the State of Oregon has the right to make selection of any unappropriated saline lands within the State in satisfaction of its grant.

Oregon v. Jones, 24 L. D. 116, p. 119.

3. SELECTION OF LIEU LANDS—PROOF OF MINERAL CHARACTER.

A State will not be permitted to make selection in lieu of land in a school section alleged to be mineral in character, whether returned by the surveyor general as mineral or otherwise, where the proof falls short of showing that such lands were of known mineral character at the date of the survey and does not overcome the presumption that the title passed to the State upon their identification by survey.

Oregon, In re, 32 L. D. 105, p. 106.

Under this act and the regulations, the State will not be permitted to make selections in lieu of land within a school section alleged to be mineral in character and consequently excepted from the grant, whether returned by the surveyor general as mineral or not, in the absence of proof that the base land was known to be chiefly valuable for mineral at the date the State's rights attached.

Oregon, In re, 32 L. D. 412, p. 413.

The Land Department has always required satisfactory proof in support of the alleged mineral character of base lands and the rule is prescribed only to aid the State in the orderly presentation of its claim, and until approved by the Secretary of the Interior there is in realty no selection as the prooof of a list and showing in support thereof are only preliminary proceedings taken for that purpose.

Oregon, In re, 32 L. D. 412, p. 413.

In the absence of a bona fide claim asserted under the mining laws, the State will not be heard to question its own title and that of its vendees to the lands in place for the purpose of affording it a base for the selection of indemnity lands elsewhere.

Oregon, In re, 32 L. D. 412, p. 414.

12 STAT. 124, DECEMBER 17, 1860.

SELECTION OF SALT SPRINGS—OREGON.

AN ACT To amend the fourth section of the act for the admission of Oregon, etc.

Be it enacted, etc, That the time for selecting the salt springs and contiguous lands, according to the provisions of the fourth section of the act entitled "An act for the admission of Oregon into the Union," approved February 14, 1859 (11 Stat. 383), be extended to any time within three years from the passage of this act, anything in said section to the contrary notwithstanding.

A. SALT SPRINGS—TIME OF SELECTION.

This act amends the original only in the matter of time within which the selection of salt springs is to be made by extending it to any time within three years from the passage of the amendatory act.

Oregon v. Jones, 24 L. D. 116, p. 118.

12 STAT. 126, JANUARY 29, 1861.

SALINES AND SALT SPRINGS GRANTED TO KANSAS.

AN ACT For the admission of Kansas into the Union.

Be it enacted, etc., That the State of Kansas shall be, and is hereby declared to be, one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever. And the said State shall consist of all the territory included within the following boundaries, to wit: (Here describing).

* * * * * * *

SEC. 3. And be it further enacted, That nothing in this act shall be construed as an assent by Congress to all or to any of the propositions or claims contained in the ordinance of said constitution of the people of Kansas, or in the resolutions thereto attached; but the following propositions are hereby offered to the said people of Kansas for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Kansas, to wit: * * * Fourth. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State, and when so selected to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. * * *

12 STAT. 503, JULY 2, 1862.

LANDS DONATED TO STATES.

AN ACT Donating public lands to the several States and Territories which may provide colleges, etc.

Be it enacted, etc., That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to 30,000 acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of 1860: Provided, That no mineral lands shall be selected or purchased under the provisions of this act.

* * * * * * *

13 STAT. 30, MARCH 21, 1864.

SALINES AND MINERALS RESERVED—NEVADA.

AN ACT To enable the people of Nevada to form a constitution and State government, etc.

Be it enacted, etc., That the inhabitants of that portion of the Territory of Nevada included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State government, with the name aforesaid, etc.
* * *

SEC. 7. And be it further enacted, That sections Nos. 16 and 36, in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools.

A. GRANT TO NEVADA.

1. CONSTRUCTION—RESERVATIONS.
2. MINERAL LANDS RESERVED.
3. SALINES NOT GRANTED.
4. SCHOOL GRANTS—INDEMNITY LANDS.

1. CONSTRUCTION—RESERVATIONS.

At the date of the admission of Navada as a State Congress and the entire country knew that the State was possessed of great mineral wealth, and that lands containing it should be disposed of differently from those fit only for agriculture. But until the State surveys and reserves sections 16 and 36 Congress reserved the right either to reserve or otherwise dispose of such section or the mineral lands therein.

Heydenfeldt v. Daney Gold, etc., Min. Co., 93 U. S. 634, p. 640.

By this and similar grants to other States Congress did not intend to depart from its uniform policy in reserving its mineral lands in the grants of sections 13 and 36 for school purposes.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 588.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 174.

2. MINERAL LANDS RESERVED.

While there was no express exception of mineral lands in the grant of school lands to Nevada, yet the mineral lands in sections 16 and 36 are not included in this grant because of the settled policy of the Government to withhold mineral lands unless expressly granted.

Keystone Lode & Mill Site v. Nevada, 15 L. D. 259.

The grant of the sixteenth and thirty-sixth sections of public lands to Nevada for school purposes did not convey mineral lands.

Keystone Lode & Mill Site v. Nevada, 15 L. D. 259, p. 260.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167.
Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 603.

Mineral lands are excepted from this grant by virtue of the joint resolution of January 30, 1865 (13 Stat. 567).

Nevada, In re, Copp's Min. Lands 76.

3. SALINES NOT GRANTED.

Saline lands are mineral and were not included in the grant by the United States to the State of Nevada.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 587.
Hall v. Litchfield, Copp's Min. Lands 333.
Eagle Salt Works, In re, 5 C. L. O. 4.
Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326.
See Garrard v. Silver Peak Mines, 94 Fed. 983, p. 987.

4. SCHOOL GRANTS—INDEMNITY LANDS.

This act grants to Nevada sections 16 and 36 for school purposes, but expressly excepts such sections when found to be mineral and permits the State to select other lands as indemnity.

Nevada, In re, Copp's Min. Dec. 30, p. 31. See 1 C. L. O. 5.

Under this statute sections 16 and 36 were reserved to the State of Nevada, but this did not render void the claim or right of a qualified person, whose settlement on mineral lands which embrace a part of either of said sections was prior to the United States survey, and who afterwards received a patent for such lands, and the title of such person to such land was superior to that of the holder of an older patent from the State of Nevada.

Heydenfeldt v. Daney Gold, etc., Min. Co., 93 U. S. 634, p. 640.

13 STAT. 47, APRIL 19, 1864.

SALINES AND SALT SPRINGS GRANTED TO NEBRASKA.

AN ACT To enable the people of Nebraska to form a constitution, etc.

Be it enacted, etc. * * *

SEC. 11. And be it further enacted, That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the said land to be selected by the governor thereof, within one year after the admission of the State, and when so selected to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or lands, the right whereof is not vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this act, be granted to said State.

* * * * * * *

A. NEBRASKA ENABLING ACT.

1. CONSTRUCTION AND PURPOSE AS TO SALINES.
2. SALINES AND SALT SPRINGS INCLUDED.
3. VESTED RIGHTS IN SALT SPRINGS—EFFECT.

1. CONSTRUCTION AND PURPOSE AS TO SALINES.

This statute intends to reserve salines, and the purpose of reserving them was to preserve them for the use of the future States. But no State has been organized without a grant of a certain number of salt springs. In the earlier grants all the salt springs within the boundaries of the State were given, but since the admission of Missouri the number has been limited to 12, and this number, with a certain quantity of contiguous land, were granted to Nebraska on her admission. Congress in this act assumed that the springs had been reserved from sale.

Morton v. Nebraska, 88 U. S. 660, p. 672.

By the enactment of these statutes Congress did not intend to permit the sale of salines in Territories soon to be organized into States, and thereby subvert a long-established policy. These statutes amount to legislative construction showing that these salines had been reserved.

Morton v. Nebraska, 88 U. S. 660, p. 671.
See Garrard v. Silver Peak Mines, 82 Fed. 578, p. 588.

This act affords further evidence that Congress by the act of July 22, 1854 (10 Stat. 308), intended to reserve saline.

Morton v. Nebraska, 88 U. S. (21 Wall.) 660, p. 671.

2. SALINES AND SALT SPRINGS INCLUDED.

This act granted to Nebraska all the salt springs and the lands reserved for the use of the same.

Hall v. Litchfield, 2 C. L. O. 179.

Where saline lands granted under this act have been selected, the grant is satisfied and then the act of January 12, 1877 (19 Stat. 221), applies.

Horton, In re, 9 C. L. O. 121, p. 122.

While the words of the proviso to the saline grant to Nebraska are not the same as those used in the Missouri grant, yet they mean the same thing and refer to completed claims, while the last provision in each proviso has reference to claims in course of completion but not finally passed upon.

Morton v. Nebraska, 88 U. S. 660, p. 673.

3. VESTED RIGHTS IN SALT SPRINGS—EFFECT.

This act provided that no salt spring, the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

This act granted to the State of Nebraska all salt springs not exceeding 12 in number with six sections of adjoining or contiguous land to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 4.

The vested right spoken of in this statute does not mean a location made on lands reserved from sale or entry.

Morton v. Nebraska, 88 U. S. 660, p. 673.

13 STAT. 567, JANUARY 30, 1865.

MINERAL LANDS RESERVED FROM STATE AND RAILROAD GRANTS.

JOINT RESOLUTION Reserving mineral lands, etc.

Be it resolved, etc., That no act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations, to aid in the construction of roads or for other purposes, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be, and are, reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

A. EFFECT AND APPLICATION OF RESOLUTION.

1. MINERAL LANDS EXCEPTED FROM CONGRESSIONAL GRANTS.
2. MINERAL LANDS IN NEVADA.
3. RAILROAD GRANT—NORTHERN PACIFIC.

1. MINERAL LANDS EXCEPTED FROM CONGRESSIONAL GRANTS.

While this act refers in terms to grants made during the first session of the Thirty-eighth Congress, yet it may properly be regarded as expressive of the sense of Congress

that no grant of public lands to a State or corporation shall include mineral lands unless expressly provided.

Florida Central & Peninsular R. Co., In re, 26 L. D. 600, p. 602.

2. MINERAL LANDS IN NEVADA.

This act excludes from the operation of the enabling act of the State of Nevada all mineral lands.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 315.
Nevada, In re, Copp's Min. Lands 76.

3. RAILROAD GRANT—NORTHERN PACIFIC.

See 13 Stat. 343, p. 786; 13 Stat. 529, p. 788.

By this amendatory act all mineral lands were expressly excluded from the operation of the original grant to the Northern Pacific Railroad Co.

Traphagen v. Kirk, 30 Mont. 562, p. 571.

14 STAT. 43, MAY 5, 1866.

MINERAL LANDS EXCEPTED AND CLAIMS PROTECTED.

AN ACT Concerning the boundaries of Nevada.

Be it enacted, etc., That, as provided for and consented to in the constitution of the State of Nevada, all that territory and tract of land adjoining the present eastern boundary of the State of Nevada, * * * is hereby added to and made a part of the State of Nevada.

SEC. 2. And be it further enacted, That there is hereby added to and made a part of the State of Nevada all that extent of territory lying within the following boundaries, to wit (here described): Provided, That the territory mentioned in this section shall not become a part of the State of Nevada until said State shall, through its legislature, consent thereto: And provided further, That all possessory rights acquired by citizens of the United States to mining claims, discovered, located, and originally recorded in compliance with the rules and regulations adopted by miners in the Pah-Ranagat and other mining districts in the territory incorporated by the provisions of this act into the State of Nevada shall remain as valid subsisting mining claims; but nothing herein contained shall be so construed as granting a title in fee to any mineral lands held by possessory titles in the mining States and Territories.

A. MINING TITLES PROTECTED.

This act recognizes and protects the title to valid subsisting mining claims located in compliance with the rules and regulations adopted by miners.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 62.

14 STAT. 80, JULY 3, 1866.

MINERAL LANDS RESERVED FROM GRANT IN MICHIGAN.

AN ACT Granting certain lands to the State of Michigan to aid in the construction of a ship canal, etc.

Be it enacted, etc., That there be, and is hereby, granted to the State of Michigan, for the use and benefit of the "Lac La Belle Harbor Improvement Company," a company organized under and

by virtue of the laws of the State of Michigan, for the purpose of aiding in the construction of a ship canal to connect the waters of Lake Superior with the lake known as Lac La Belle, in said State, 100,000 acres of the public lands of the United States in the Upper Peninsular of Michigan, to be selected from the odd-numbered sections of land nearest the location of said canal, not otherwise reserved or appropriated, or designated by the United States as "mineral lands" prior to the passage of this act, nor to which the rights of preemption or homestead have attached: * * *

14 STAT. 81, JULY 3, 1866.

CANAL GRANTS—MINERAL LANDS RESERVED.

AN ACT Granting lands to Michigan to aid in the construction of a harbor and ship canal at Portage Lake, Keewenaw Point, Lake Superior.

Be it enacted, etc., That there be, and hereby is, granted to the State of Michigan, to aid in the building of a harbor and ship canal at Portage Lake, Keewenaw Point, Lake Superior, in addition to a former grant for that purpose, approved March 3, 1865 (13 Stat. 520), 200,000 acres of land in the Upper Peninsular of the State of Michigan, and from land to which right of homestead or preemption has not attached. * * * And provided further, That no lands designated by the United States as "mineral" before the passage of this act shall be included within this grant.

14 STAT. 85, JULY 4, 1866.

MINERAL LANDS RESERVED FROM SALE—NEVADA.

AN ACT Concerning certain lands granted to Nevada.

Be it enacted, etc., That the appropriation by the constitution of the State of Nevada to educational purposes of the 500,000 acres of land granted to said State by the law of September 4, 1841, for purposes of internal improvement, is hereby approved and confirmed.

* * * * * * *

SEC. 5. And be it further enacted, That in extending the surveys of the public lands in the State of Nevada, the Secretary of the Interior may, in his discretion, vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country; but in all cases lands valuable for mines of gold, silver, quicksilver, or copper shall be reserved from sale.

A. MINERAL ACTS CODIFIED.
B. RESERVATIONS OF MINERAL LANDS.
C. NEVADA ESTOPPED FROM CLAIMING TITLE TO MINES.

A. MINERAL ACTS CODIFIED.

The provisions of this statute and of all other mining statutes as originally enacted, are at present codified and embodied in sections 2318 to 2352 of the Revised Statutes.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 235.

B. RESERVATIONS OF MINERAL LANDS.

This act reserved from sale all mineral lands in the State and authorized lines of surveys to be changed so as to include such mineral lands.

Heydenfeldt v. Daney Gold, etc., Min. Co., 93 U. S. 634, p. 641.

Prior to this statute there was no law authorizing the sale or disposal of public mineral lands and all the public land acts contain reservations of some description from their operation of lands known to contain minerals of value.

Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 330.

C. NEVADA ESTOPPED FROM CLAIMING TITLE TO MINES.

The State of Nevada, by the acceptance of the grant as modified by this act, was estopped from thereafter claiming title to any lands valuable for mines of gold, silver, quicksilver, or copper, as such lands were expressly reserved from sale.

Heydenfeldt v. Daney Gold, etc., Min. Co., 10 Nev. 290, p. 312.

14 STAT. 409, FEBRUARY 25, 1867.

WAGON ROAD GRANT—MINERAL LANDS EXCEPTED—OREGON.

AN ACT Granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City to Fort Boise.

Be it enacted, etc., That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from Dalles City on the Columbia River, by way of Camp Watson, Canon City, and Mormon or Humboldt Basin, to a point on Snake River opposite Fort Boise, in Idaho Territory, alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road: Provided, That the lands hereby granted shall be exclusively applied to the construction of said road, and to no other purpose; and shall be disposed of only as the work progresses: And provided further, That any and all lands heretofore reserved to the United States, or otherwise appropriated by act of Congress or other competent authority, be, and the same are hereby, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way to the width of 100 feet is granted: And provided further, That the grant hereby made shall not embrace any mineral lands of the United States.

15 STAT. 67, p. 68, chap. 55, JUNE 8, 1868.

COLLEGE GRANT—MINERAL LANDS EXCEPTED—NEVADA.

AN ACT To further provide for giving effect to the various grants of public lands to the State of Nevada.

Be it enacted, etc., * * *

SEC. 2. And be it further enacted, etc., That the lands known and designated for the establishment of an agricultural college by the act of July 2, 1862, and the acts amendatory thereto, shall be selected in the same manner and of the same character of lands as may be selected in satisfaction of any other grants referred to in the first section of this act. But this act shall not authorize the selection of lands valuable for mines of gold, silver, quicksilver, or copper.

16 STAT. 561 (AMENDMENT TO 15 STAT. 67), MARCH 3, 1871.

COLLEGE GRANT—MINERAL LANDS EXCEPTED—CALIFORNIA AND NEVADA.

AN ACT Amendatory of an act entitled "An act to further provide for giving effect to the various grants of public lands to the State of Nevada," approved June 8, 1868.

Be it enacted, etc., That section 4 of an act entitled "An act to further provide for giving effect to the various grants of public lands

to the State of Nevada" (15 Stat. 67), be, and the same is hereby, amended so as to read as follows: And it is further enacted that the lands granted to the State of California for the establishment of an agricultural college by the act of July 2, 1862 (12 Stat. 503), and acts amendatory thereto (14 Stat. 208), may be selected by said State from any lands within said State, subject to preemption, settlement, entry, sale, or location, under any laws of the United States. Such selection may be made in any legal subdivisions, adjoining by sides, so as to constitute bodies of not less than 160 acres; or they may be made in separate subdivisions of 40, 80, or 120 acres, respectively: Provided, That this privilege shall not extend to lands upon which there may be rightful claims under the preemption and homestead laws, nor to mineral lands: And provided further, That if lands be selected as aforesaid, the minimum price of which is $2.50 per acre, they shall be taken acre for acre in part satisfaction of the grant, and the State of California shall pay to the United States the sum of $1.25 per acre for each acre so selected, when the same shall be patented to the State by the United States: Provided further, That where lands, sought to be selected for the agricultural college, are unsurveyed, the proper authorities of the State shall file a statement to that effect with the register of the United States land office, describing the land by township and range, and shall make application to the United States surveyor general for a survey of the same, the expenses of the survey for field work to be paid by the State, provided there be no appropriation by Congress for that purpose. The United States surveyor general, as soon as practicable, shall have the said lands surveyed and the township plats returned to the United States Land Office, and lands so surveyed and returned shall, for 30 days after the filing of the plats in the United States Land Office, be held exclusively for location for the agricultural college, and within said 30 days the proper authorities of the State shall make application to the United States Land Office for the lands sought to be located by sections and parts of sections: Provided, That any rights, under the preemption or homestead laws, acquired prior to the filing of the required statement with the United States register, shall not be impaired or affected by this act: And provided further, That such selections shall be made in every other respect subject to the conditions, restrictions, and limitations contained in the acts hereby modified.

A. STATE GRANT—NEVADA.
B. STATE GRANT—CALIFORNIA.

A. STATE GRANT—NEVADA.

1. MINERAL LANDS EXCEPTED.

It has been assumed that not only mining claims but all known mines, whether claimed or not, were reserved from this grant.

Richards v. Dower, 81 Cal. 44, p. 50.

This act, amendatory of the act of 1867, expressly excepts any valid mining claim or possession held under existing laws.

Hawke v. Deffeback, 4 Dak. 20, p. 34.

B. STATE GRANT—CALIFORNIA.

1. SALE BY STATE—MINERAL LANDS EXCEPTED.

By these statutes California was permitted to sell lands, granted from any lands within her limits subject to preemption, except mineral lands.

McNee v. Donahue, 142 U. S. 587, p. 600.

15 STAT. 169, JULY 23, 1866.

NAVIGATION GRANT—MINERAL LANDS EXCEPTED—MINNESOTA.

AN ACT Making a grant of land to the State of Minnesota to aid in the improvement of the navigation of the Mississippi River.

Be it enacted, etc., That there be, and hereby is, granted to the State of Minnesota, for the purpose of aiding said State in constructing and completing a lock and dam at Meekers Island, (so called), in the Mississippi River, in said State, and thereby facilitating the navigation of the Mississippi River between the falls of St. Anthony and the mouth of the Minnesota River, 200,000 acres of public lands, to be selected in alternate odd-numbered sections by an agent to be appointed by the governor of said State, subject to the approval of the Secretary of the Interior: Provided, That said lands shall be selected from the public lands lying within the limits of the said State of Minnesota, and that not more than one section thereof shall be selected in any one township: Provided further, That said selection shall not be made from any lands containing mines of gold, silver, cinnabar, or copper, nor from any lands to which rights of preemption or homestead have attached.

A. STATE GRANT—MINNESOTA.

1. MINERAL LANDS EXCEPTED.

This act expressly declares that neither title nor possession can be acquired or claimed to any valid mining claim or possession held under the act of March 2, 1867 (14 Stat. 541).

Nagler, In re, Copp's Min. Dec. 156.

15 STAT. 178, p. 183, JULY 25, 1866.

SCHOOL GRANT TO WYOMING.

AN ACT To provide a temporary government for the Territory of Wyoming.

Be it enacted, etc., * * *

SEC. 14. And be it further enacted, That sections numbered 16 and 36 in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same.

A. SCHOOL GRANT—WYOMING.

1. SCHOOL LANDS—COAL LANDS INCLUDED.

This section makes no exception in reserving sections 16 and 36 for school purposes, and the Land Department is without authority of law for disposing of coal lands found in these sections in Wyoming, except under the act of March 3, 1873 (17 Stat. 607).

Foster, In re, Copp's Min. Lands 337.

15 STAT. 340, MARCH 3, 1869.

WAGON ROAD GRANT—MINERAL LANDS EXCEPTED—OREGON.

AN ACT Granting lands to the State of Oregon to aid in the construction of a military road from the navigable waters of Coos Bay to Rosebury in said State.

Be it enacted, etc., That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Rosebury, alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road: Provided, That the lands hereby granted shall be exclusively applied to the construction of said road and to no other purpose, and shall be disposed of only as the work progresses: Provided further, That the grant of lands hereby made shall be upon the condition that the lands shall be sold to any one person only in quantities not greater than one-quarter section, and for a price not exceeding $2.50 per acre: And provided further, That any and all lands heretofore reserved to the United States, or otherwise appropriated by act of Congress or other competent authority, be, and the same are hereby, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way to the width of 100 feet is granted: And provided further, That the grant hereby made shall not embrace any mineral lands of the United States, or any lands to which homestead or preemption rights have attached.

16 STAT. 594, FEBRUARY 9, 1871.

AGRICULTURAL GRANT—MINERAL LANDS RESERVED—KANSAS.

JOINT RESOLUTION Authorizing the sale of a portion of the Fort Leavenworth Military Reservation to the Kansas Agricultural and Mechanical Association of Leavenworth County, in the State of Kansas, for fair grounds.

Be it resolved, etc., That the Kansas Agricultural and Mechanical Association, a corporate body organized under and by virtue of the laws of the State of Kansas, is hereby authorized to purchase from the United States, for the sole purpose and use of such association as a fair ground, and for experimental agriculture and horticulture, that portion of the Fort Leavenworth Military Reservation bounded and described as follows, viz: (here follows a description); reserving to the Government or assigns the right to the coal, or royalty for coal, underlying the same.

* * * * * * *

18 STAT. 474, p. 476, 1 SUPP. R. S. 86, MARCH 3, 1875.

SALINES AND MINERALS EXCEPTED FROM GRANT TO COLORADO.

AN ACT To enable the people of Colorado to form a constitution and State government, etc.

Be it enacted, etc., * * *

SEC. 11. That all salt springs within said State, not exceeding 12 in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said State for its use, the said land to be selected by the governor of said State within two years after the admission of the State, and when so selected to be used

and disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or lands the right whereof is now vested in any individual or individuals, of which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State.

* * * * * * *

SEC. 15. That all mineral lands shall be excepted from the operation and grants of this act.

A. STATE GRANT—COLORADO.

1. MINERAL LANDS EXCEPTED—INDEMNITY LANDS.
2. LANDS VALUABLE FOR MINERALS—MEANING.
3. SALT SPRINGS—SELECTION AND LIMITATION.
4. COAL LANDS EXCEPTED.
5. SCHOOL LANDS.
   a. KNOWN MINERAL LANDS EXCEPTED.
   b. TIME GRANT TAKES EFFECT—SURVEY.
   c. DISCOVERY OF MINERAL SUBSEQUENT TO SURVEY—EFFECT.
   d. RIGHT OF MINERAL CLAIMANT.

1. MINERAL LANDS EXCEPTED—INDEMNITY LANDS.

Section 15 of this act expressly excepts mineral lands from the operation of the grant.

Virginia Lode, In re, 7 L. D. 459, p. 460.
Hall v. Litchfield, 3 C. L. O. 196.
Fox, In re, 4 C. L. O. 66.
Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.
Twin Lake Consol. Placer Min. Co., In re, 10 C. L. O. 292, p. 293.
Alabama, In re, 15 C. L. O. 7, p. 9.

This act does nor provide that land which is worked for minerals shall be excepted from the grant, but it expressly excepts all mineral lands whether worked or not.

Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.

This section excludes all mineral lands from the operation of the grant, as the words "mineral land", as used in this section, are used in contradistinction to the words "agricultural land."

Hall v. Litchfield, 3 C. L. O. 196.
Fox, In re, 4 C. L. O. 66.

This statute expressly excepts from the grant all mineral lands and gives to the State of Colorado other lands as indemnity therefor, and the grant does not fix the title of the State to any mineral land, and if the mineral character of the land is known prior to certification then other land in lieu of sections 16 and 36 should be certified to the State.

Colorado, In re, 7 L. D. 490, p. 491.

2. LANDS VALUABLE FOR MINERALS—MEANING.

Such a grant as is made in this act does not exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to justify expenditures for their extraction and known to be so at the date of the grant.

Warren v. Colorado, 14 L. D. 681, p. 685.
See Davis v. Weibbold, 139 U. S. 507.

The mere outcropping of surface veins of coal on a school section, with two or three insignificant openings on surface coal, with but a few wagon loads taken from such outcropping surface veins, are not sufficient to establish the mineral character of such lands and except it from the operation of school lands.

Frees v. Colorado, 22 L. D. 510.

3. SALT SPRINGS—SELECTION AND LIMITATION.

This grant is limited to 12 salt springs, and all other salt springs above that number are subject to other laws, and if a third party had intervened prior to the selection by the State and initiated proceedings under the act of 1877 (19 Stat. 221), the right of the State would have been lost.

Colorado, In re, 10 L. D. 222, p. 227.

This act granted to the State of Colorado all salt springs not exceeding 12 in number, with six sections of adjoining or contiguous land, to be selected within prescribed periods, but excluding all salt springs wherein private rights have vested.

New Mexico, In re, 35 L. D. 1, p. 4.
Hall v. Litchfield, 2 C. L. O. 179.

This act, while authorizing the people of Colorado to form a State, provides that no salt springs, the right whereof now is or hereafter shall be confirmed or adjudged to any individual or individuals, shall by this section be granted to said State.

Southwestern Min. Co., In re, 14 L. D. 597, p. 601.

Under this act the Land Department has no authority to dispose of lands either as agricultural or mineral lands on which salt springs are shown to exist, together with 6 sections adjoining and as contiguous as may be to each of such springs, and this places Colorado on an equal footing with the other States in the matter of salt springs reservations.

Hall v. Litchfield, 2. C. L. O. 179.

The failure of the State of Colorado to make its selections of salt springs within the time fixed by this section does not work a forfeiture of the grant, as the statute in this respect is directory merely, and the right of selection does not expire at the end of two years.

Colorado, In re, 10 L. D. 222, p. 223.
Oregon v. Jones, 24 L. D. 116, p. 118.

Lands in which mineral springs are situated were subject to disposal under general laws, prior to the act of January 31, 1901 (31 Stat. 745), and were subject to location and entry with Valentine Scrip, but are now subject to location, entry, and sale under the mining laws.

Roberts v. Foote, 9 C. L. O. 3, p. 4.

4. COAL LANDS EXCEPTED.

Lands generally known to be valuable coal lands did not pass to the State of Colorado by this act.

Burkhart, In re, 15 C. L. O. 38.
See Colorado, In re, 7 L. D. 490.
Ramey, In re, 15 C. L. O. 194.

Sections 16 and 36, if known to contain deposits of coal, or known to be valuable as coal or mineral lands, did not pass to the State for school purposes under this grant.

Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.
See Norager, In re, 10 C. L. O. 54.
McKean v. Buell, Copp's Min. Lands 343.
Hodgen v. California, 1 C. L. O. 135, Sickels' Min. L. & D. 405.

Sections 16 and 36 of the several townships of the State did not pass to the State under this act where such sections contain valuable deposits of coal.

Colorado, In re, Copp's Min. Lands 341, p. 342.

Whether lands are coal lands is a question of fact, and when disputed a hearing may be ordered to determine the character of the land.

Burkhart, In re, 15 C. L. O. 38.

5. SCHOOL LANDS.

a. KNOWN MINERAL LANDS EXCEPTED.

Where sections 16 and 36 were, at the time of the admission of Colorado, known to contain mineral they did not pass under this grant.

Townsite of Silver Cliff, In re, 6 C. L. O. 152.
Colorado School Sections, In re, 16 C. L. O. 242.
Dartt, In re, 5 C. L. O. 178.

The State takes title to sections 16 and 36 for school purposes where the lands are not known to be mineral at the time of the survey.

Miner, In re, 9 L. D. 408, p. 413.
Overruling Colorado, In re, 7 L. D. 490.
See Spong, In re, 5 L. D. 193.

The title to sections 16 and 36 vested in the State of Colorado at the date of survey where the land was not known to be mineral or was not treated as such by the Government, and the title is not divested by the subsequent discovery of the mineral character.

Miner, In re, 9 L. D. 408, p. 409.
See Cooper v. Roberts, 59 U. S (18 How.) 173.
See Mining Co. v. Consolidated Min. Co., 102 U. S. 167, p. 175.
Pereira v. Jacks, 15 L. D. 273.
Rice v. California, 24 L. D. 14, p. 15.
Loney v. Scott, 57 Oreg. 378, p. 383.

This grant of sections 16 and 36 includes all kinds of land, and upon principle all lands embraced in said sections, except mineral lands, pass to the State, and no patent or certificate was necessary if they were not mineral in character.

Warren v. Colorado, 14 L. D. 681, p. 684.

b. TIME GRANT TAKES EFFECT—SURVEY.

The grant as to nonmineral lands in sections 16 and 36 took effect, as to sections which had then been surveyed at the date of the President's proclamation, August 1, 1876 (19 Stat. 665), admitting Colorado as a State.

Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.

Where a survey was approved subsequent to the date of the admission of Colorado, and at the time of such approval lands in sections 16 and 36 were known to be mineral in character, they did not pass to the State.

Townsite of Silver Cliff v. Colorado, 6. C. L. O. 152.
Colorado Schools Sections, In re, 16 C. L. O. 242.

If upon survey the lands embraced in sections 16 and 36 are shown to be mineral within the meaning of the statute, the State is not entitled to these specific lands, as their disposal has been otherwise provided for but the State would be entitled to equivalent lands as indemnity therefor.

Colorado, In re, 6 L. D. 412, p. 419.

Where a survey of sections 16 and 36 was approved subsequent to the admission of Colorado, lands in said sections then known to be mineral did not pass to the State.

Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.
Colorado Schools Sections, In re, 16 C. L. O. 242.

The grant as to sections 16 and 36 surveyed subsequent to the admission of Colorado as a State took effect at the date of the approval of the survey by the United States surveyor general; and if lands in such sections were known to be mineral prior to both survey and admission of the State, it is immaterial that the surveyor general did not discover their true character.

Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.
See Virginia Lode, In re, 15 C. L. O. 218.
Cooper v. Roberts 59 U. S. (18 How.) 173.

The State's title to school land would not pass under this act where a survey is grossly irregular on its face and surrounded by other unreliable surveys by which its own accuracy is necessarily affected, and which was subsequently set aside.

Harvey, In re, 15 C. L. O. 218.

A mining claim located on school sections under this act will have priority over the State's right where the survey was grossly irregular on its face and surrounded by other unreliable surveys, and which was afterwards set aside.

Harvey, In re, 15 C. L. O. 218.
See Bowe, In re, 15 C. L. O. 246.

The title of the State to mineral lands will not pass on a survey grossly irregular on its face and surrounded by other unreliable surveys by which its own accuracy is necessarily affected.

Virginia Lode, In re, 7 L. D. 459, p. 461.

The grant to Colorado took effect on the date of the proclamation by the President but conveyed no land known to be mineral in character prior to such date.

Warren v. Colorado, 14 L. D. 681, p. 683.

c. DISCOVERY OF MINERAL SUBSEQUENT TO SURVEY—EFFECT.

The enabling act admitting Colorado gave the State sections 16 and 36 for school purposes, if such sections were not known to contain minerals at the date of the approval of the survey, and the discovery of minerals on such sections subsequent to such approval does not defeat the title of the State.

Colorado, In re, 6 L. D. 412.
Virginia Lode, In re, 7 L. D. 459, p. 460.
Dartt, In re, 5 C. L. O. 178.
Townsite of Silver Cliff v. State of Colorado, 6 C. L. O. 152.
Loney v. Scott, 57 Oreg. 378, p. 383.

The State's title to lands vests on the approval of the survey, and titles to lands not, then known to contain minerals can not be divested by any subsequent discovery of mineral thereon.

Virginia Lode, In re, 7 L. D. 459, p. 460.
See Cooper v. Roberts, 59 U. S. (18) How.) 173.

The same rule applies to grants to a State as to grants to a railroad as to the discovery of mineral after the issuance of the patent.

Virginia Lode, In re, 7 L. D. 459, p. 460.
See Spong, In re, 5 L. D. 193.

d. RIGHT OF MINERAL CLAIMANT.

A mineral entry on section 16 will be held for cancellation where the evidence fails to show that the land entered was known to be valuable for mineral prior to the date of the admission of Colorado.

Fleetwood Lode, In re, 12 L. D. 604, p. 606.
See Boulder v. Buffalo Min. Co., In re, 7 L. D. 54.

A mineral applicant for lands in section 16 will be permitted to submit supplemental proof upon due notice to the State showing the mineral character of such land prior to and at the date of the admission of the State.

Fleetwood Lode, In re, 12 L. D. 604, p. 606.

A third person can not claim title to school lands not known to be mineral at the time of the survey under the claim of a former settlement, where such former settler had abandoned the land.

Miner, In re, 9 L. D. 408, p. 415.
See Water & Min. Co. v. Bugbey, 96 U. S. 165, p. 167.

19 STAT. 665, AUGUST 1, 1876.

PROCLAMATION—COLORADO.

See 18 Stat. 474, p. 1279 for all annotations under the proclamation of August 1, 1876 (19 Stat. 665).

23 STAT. 10, 1 SUPP. 494, APRIL 2, 1884.

SCHOOL GRANT—SELECTION OF LIEU LANDS.

AN ACT To enable the State of Colorado to take lands in lieu of the 16th and 36th sections found to be mineral lands, etc.

Be it enacted, etc., That an act entitled "An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States," approved March 3, 1875 (18 Stat. 474) shall be construed as giving to the State of Colorado the right to select for school purposes other lands in lieu of such sixteenth and thirty-sixth section as may have been or shall be found to be mineral lands: Provided, That such selections shall be made from lands returned as agricultural, and upon which at the date of selection no valuable mineral discoveries have been made; and all such selections shall be reported to the Secretary of the Interior, who shall, if he is satisfied such lands so selected are not mineral, so certify, and thereupon the right of said State to such selected lands shall finally attach; and the Secretary of the Interior shall also ascertain whether any of such sixteenth and thirty-sixth sections are mineral lands, and shall certify their character, which certificate shall determine the matter.

SEC. 2. That it shall be the duty of the deputy surveyor, at the time of executing the survey of any township, to make critical examination of the character of sections 16 and 36, and to embrace in his field notes a full report of any and all mineral discoveries found to the surveyor general, who shall report to the Secretary of the Interior whether the whole or any part of either of said sections is mineral in character.

SEC. 3. That the State of Colorado, in selecting lands for agricultural-college purposes under the acts of July 2, 1864 (1862) (12 Stat. 503), and July 23, 1866 (14 Stat. 208), may select an amount of land equal to 30,000 acres for each Senator and Representative which said State is entitled to in Congress, from any public land in said State not double-minimum-priced land; or selections may be made from said double-minimum lands, but in the latter case the lands are to be computed at the maximum price and the number of acres proportionately diminished; but no mineral land shall be selected.

A. COLORADO GRANT—LIEU LANDS.

By this act the State of Colorado was given the right to sell for school purposes other lands in lieu of sections 16 and 36 where such sections were found to be mineral lands.

Colorado, In re, 6 L. D. 412, p. 419.

19 STAT. 267, p. 268, 1 SUPP. R. S. 132, p. 133, MARCH 1, 1877.

SCHOOL GRANT—INDEMNITY SELECTIONS—CALIFORNIA.

AN ACT Relating to indemnity school selections in California.

Be it enacted, etc., That the title to the lands certified to the State of California, known as indemnity school sections, which lands were selected in lieu of sixteenth and thirty-sixth sections, lying within Mexican grants, * * * is hereby confirmed to said State.

* * * * * * *

SEC. 4. That this act shall not apply to any mineral lands, nor to any lands in the city and county of San Francisco, nor to any incorporated city or town, nor to any tide, swamp, or overflowed lands.

A. OIL LANDS—CLASSIFICATION—EFFECT ON STATE'S RIGHT OF SELECTION.

The classification of land as oil and the placing of the same in a petroleum reserve will defeat an application to amend a defective school indemnity selection on the part of the State.

California, In re, 40 L. D. 301, p. 302.

21 STAT. 287, CHAP. 345, JUNE 16, 1880.

SCHOOL GRANT—SELECTION OF LANDS—NEVADA.

AN ACT To grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State.

Be it enacted, etc., That there be, and are hereby, granted to the State of Nevada 2,000,000 acres of land in said State, in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States: Provided, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act.

SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated, nonmineral, public land in said State, in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior.

SEC. 3. The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the Legislature of the State of Nevada: Provided, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said State.

SEC. 4. This act shall take effect from and after its passage.

A. STATE GRANT—NEVADA.

1. PURPOSE OF ACT.
2. APPLICATION OF ACT.
3. LIEU LANDS NOT TO INCLUDE MINERAL LANDS.
4. SELECTION BY STATE—EFFECT AS TO MINERAL CHARACTER.
5. PATENTS NOT ISSUED TO STATE.

1. PURPOSE OF ACT.

This statute was enacted on the condition that the State of Nevada accepted from the United States the 2,000,000 acres mentioned in lieu of the sixteenth and thirty-sixth sections, which fact is shown in the preamble of the act.

Garrard v. Silver Peak Mines, 82 Fed. 578.
See 21 Stat. 287, and Stat. of Nev., Mar. 8, 1879.

See 13 Stat. 32, p. 1270.

The 2,000,000-acre grant by the United States to Nevada was not intended to include any mineral lands, as it is the policy of the Government to exclude such lands from its grants.

Garrard v. Silver Peak Mines, 82 Fed. 578, p. 587.
Hermocilla v. Hubbell, 89 Cal. 5.
Heydenfeldt v. Daney, etc., Min. Co., 10 Nev. 290.
Garrard v. Silver Peak Mines, 94 Fed. 983, p. 984.

2. APPLICATION OF ACT.

This act in express terms applies only to unappropriated, nonmineral public lands.

Garrard v. Silver Peak Mines, 94 Fed. 983, p. 989.

3. LIEU LANDS NOT TO INCLUDE MINERAL LANDS.

The lieu land granted to Nevada by this act did not include mineral lands.

Keystone Lode & Mill Site v. Nevada, 15 L. D. 259, p. 261.

Mineral lands already appropriated were not within the terms of this act and the selection and certification were without authority and passed no title.

Garrard v. Silver Peak Mines, 82 Fed. 578.
Manser Lode Claim, In re, 27 L. D. 326, p. 328.

The State of Nevada by statute (St. 1887, p. 102), recognizes the fact that the several grants to it by the United States reserved all mineral lands, and all sales made by the State were made subject to such reservation.

Garrard v. Silver Peak Mines, 94 Fed. 983, p. 989.

4. SELECTION BY STATE—EFFECT AS TO MINERAL CHARACTER.

The selection by the State and the approval by the authorized officers of the Government is a determination of the nonmineral character of the lands; but this determination is not conclusive in any subsequent controversy between the State of Nevada and its grantee of any of such selected lands.

Stanley v. Mineral Union, 26 Nev. 55, pp. 62, 64.

While a decision of a Federal court is not binding on the question of the mineral character of land, and the selection and certification of such land of no effect under

this act, though it is evidence of a high order, both as to the character and condition of the land involved and the validity of the applicant's claim thereto, it will be assumed that the judgment of the court is a final judgment between the parties.

Manser Lode Claim, In re, 27 L. D. 326, p. 328.
See Garrard v. Silver Peak Mines, 82 Fed. 578.

5. PATENTS NOT ISSUED TO STATE.

This act does not provide for the issuance of a patent to the State for the lands thereby granted.

Garrard v. Silver Peak Mines, 94 U. S. 983, p. 984.

25 STAT. 676, 1 SUPP. R. S. 645, FEBRUARY 22, 1889.

GRANT TO MONTANA, NORTH DAKOTA, SOUTH DAKOTA, AND WASHINGTON—MINERALS EXCEPTED.

AN ACT To provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States.

Be it enacted, etc., That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided. * * *

SEC. 10. That upon the admission of each of said States into the Union sections numbered 16 and 36 in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

* * * * * * *

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and benefit of the common schools of said States.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects. * * *

A. STATE GRANT—MONTANA, NORTH DAKOTA, SOUTH DAKOTA, AND WASHINGTON.

1. MINERAL LANDS EXCEPTED—LIEU LANDS.
2. SCHOOL LANDS—TIME GRANT TOOK EFFECT.
3. SCHOOL SECTIONS MINERAL—SELECTION OF LIEU LANDS.
4. MINERAL LANDS.
   a. DETERMINATION.
   b. STONE LANDS.
   c. COAL.
5. STATE SELECTIONS—MINERAL AFFIDAVIT.

1. MINERAL LANDS EXCEPTED—LIEU LANDS.

By the eighteenth section of this act if land was known to be mineral at the date of the admission of the State it was expressly excepted from the grant, and the State was authorized to select an equal quantity in lieu thereof for school purposes.

Washington v. McBride, 18 L. D. 199, p. 201.
See Utah v. Allen, 27 L. D. 53, p. 55.

The express provision of section 18 of this act exempting all mineral lands from the grants made by the act clearly manifests that the last clause in section 11 was not intended to include mineral lands or entries thereof under the mining laws, and the excepting provisions of section 10 indicating the time at which adverse rights must have intervened have no application to mineral appropriation.

South Dakota v. Delicate, 34 L. D. 717, p. 720.

Mineral lands were excepted from this grant to the State of Washington and a locator of a mining claim is entitled to purchase it under his mineral application.

Washington v. McBride, 25 L. D. 167, p. 180.
Arnold, In re, 24 L. D. 486.

Under this act land known to be mineral in character prior to the Secretary's approval of the list of State selections and prior to certification is exempt from the operation of the grant, and the Land Department may order a hearing to determine whether the land was of the character contemplated by the act and was not intended to be granted thereby.

Arnold, In re, 24 L. D. 486, p. 488.

The fact that land was covered by a placer location, or was embraced in a pending application for a placer patent, did not operate to except it from this grant if it was in fact nonmineral land.

Bourquin, In re, 27 L. D. 289, p. 290.

2. SCHOOL LANDS—TIME GRANT TOOK EFFECT.

The grant of sections 16 and 36 under this act took effect on the admission of South Dakota into the Union as to lands at that date identified by the Government surveys; but the right of the State did not attach to lands not surveyed, and if at the time of survey they are known to be mineral in character they are expressly excepted from the grant.

South Dakota v. Trinity Gold Min. Co., 34 L. D. 485, p. 486.
Law v. Utah, In re, 29 L. D. 623.
See Cooper v. Roberts, 59 U. S. (18 How.) 173, p. 179.
Heydenfeldt v. Daney Gold, etc., Min. Co., 93 U. S. 634.
Utah v. Allen, 27 L. D. 53.
Utah, In re, 29 L. D. 418, p. 419.
Utah, In re, 32 L. D. 117.
South Dakota v. Delicate, 34 L. D. 717, p. 722.
South Dakota v. Walsh, 34 L. D. 723.

Lands embraced in sections 16 and 36 and at that time known to be mineral in character were not intended to pass under this grant, as the exempting provisions of section 18 embrace all lands which shall be found to be mineral lands, and it does not operate to defeat the grant in any part by conditions subsequently arising by thus excluding mineral lands, if known to be such, from the grant, nor can the grant attach to specific sections or parts of sections comprising lands of known mineral character, and any lands found to be mineral, prior to the ascertainment by approved surveys of sections 16 and 36, at which time the grant would otherwise become operative and the legal title pass, are within the exemption.

South Dakota v. Delicate, 34 L. D. 717, p. 721.
See Borden v. Northern Pac. R. Co., 154 U. S. 288.

The provisions of the grant of school lands to Utah (28 Stat. 107) are identical in all essential respects with those of this grant to South Dakota, and as to the former grant the department has uniformly held that it took effect upon the admission of the State into the Union as to lands at that date identified by the Government survey, and if at the time of such identification they are of known mineral character they are excluded from the grant.

South Dakota v. Trinity Gold Min. Co., 34 L. D. 485, p. 486.
See Utah v. Allen, 27 L. D. 53.
Utah, In re, 29 L. D. 418, p. 419.
Barnhurst v. Utah, 30 L. D. 314.
Utah, In re, 32 L. D. 117.

3. SCHOOL SECTIONS MINERAL—SELECTION OF LIEU LANDS.

By section 18 mineral lands are expressly exempted from the grants made by the act, and provision is made for indemnity to each of the States named, for such sections 16 and 36 or any subdivisions thereof as may be found to be mineral lands and indicating that future disclosures were contemplated.

Montana v. Silver Star Min. Co., 23 L. D. 313, p. 315.
Bourquin, In re, 27 L. D. 289.
South Dakota v. Delicate, 34 L. D. 717, p. 720.

Selections of lands for school purposes in lieu of land patented as mineral operates to reserve such lands as against a subsequent homestead application.

McKenzie v. Washington, 14 L. D. 282.

4. MINERAL LANDS.

a. DETERMINATION.

The mineral character of a tract of land can not be wholly determined by reference to the surrounding lands, yet the mineral quality of such surrounding lands is in cases otherwise doubtful a proper subject for consideration, and the fact that the particular section of country has long been settled and occupied by a large population, but none of the land has ever been entered under any of the mining laws, and no kind of mining has been done, will aid in determining the mineral character of land in dispute.

Washington v. McBride, 25 L. D. 167, p. 181.

Upon the extension of the public survey sections 16 and 36 presumptively pass to South Dakota under this grant, but where the mineral character of a conflicting mining claim is challenged, then the usual formal proofs under mineral patent proceedings will not be sufficient, but in such case the mineral character of the claim involved must be established by substantive proof, and the State is not bound to take the initiative at a hearing ordered for the purpose.

South Dakota v. Walsh, 34 L. D. 723, p. 724.
Distinguishing Mahoganey No. 2 Lode Claim, In re, 33 L. D. 37.

When selections are made in nonmineral belts or in proximity to lands classed or returned as mineral, the party making the selection should give notice by posting and publication of such selections, describing the lands so selected.

Montana, In re, 18 L. D. 477.

b. STONE LANDS.

Lands chiefly valuable for ordinary building stone are not mineral in character in the sense in which the term mineral land is used when applied to grants.

South Dakota v. Vermont Stone Co., 16 L. D. 263, p. 264.
See Clark v. Ervin, 16 L. D. 122.

Minerals or stone discovered in sections 16 or 36 after the public survey and the location by the State for school purposes are not subject to location under the United States mining laws.

Wheeler v. Smith, 5 Wash. 704, p. 711.

c. COAL.

Under this section lands known to contain coal prior to the date of the act are excepted from the operation of the school grant.

Montana v. Buley, 23 L. D. 116, p. 117.

This act granted to the State of South Dakota sections 16 and 36, but expressly excepted mineral lands from the grant, and lands shown to be valuable for coal being thus reserved were subject to coal entry.

McGillicuddy v. Tompkins, 14 L. D. 633, p. 634.

5. STATE SELECTIONS—MINERAL AFFIDAVIT.

The mineral affidavit required by the regulations to be filed in connection with State selections must be based upon examinations made within three months preceding the date of the filing of the list.

South Dakota, In re, 37 L. D. 458, p. 459.

26 STAT. 215, JULY 3, 1890.

GRANT TO IDAHO—MINERALS EXCEPTED.

AN ACT To provide for the admission of the State of Idaho into the Union.

Whereas, The people of the Territory of Idaho did, on July 4, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a constitution, which constitution was ratified and adopted by the people of said Territory at an election held therefor on the first Tuesday in November, 1889, which constitution is republican in form and is in conformity with the Constitution of the United States; * * *

Be it enacted, etc., That the State of Idaho is hereby declared to be a State of the United States of America, and is hereby declared admitted into the Union on an equal footing with the original States in all respects whatever; and that the constitution which the people of Idaho have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed. * * *

* * * * * * *

SEC. 4. That sections numbered 16 and 36 in every township of said State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

SEC. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. * * *

* * * * * * *

SEC. 11. That in lieu of the grant of land for purposes of internal improvement made to the new States by the eighth section of the act of September 4, 1841 (5 Stat. 453), which section is hereby repealed as to the State of Idaho, and in lieu of any claim or demand by the said State under the act of September 28, 1850 (9 Stat. 519), and section 2479 R. S., making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the State of Idaho, and in lieu of any grant of saline lands to said State the following grants of lands are hereby made, to wit: To the State of Idaho: For the establishment and maintenance of a scientific school, 100,000 acres: For State normal schools, 100,000 acres; for the support and maintenance of the insane asylum located at Blackfoot, 50,000 acres; for the support and maintenance of the State University located at Moscow, 50,000 acres; for the support and maintenance of the penitentiary located at Boise City, 50,000

acres; for other State, charitable, educational, penal, and reformatory institutions, 150,000 acres. None of the lands granted by this act shall be sold for less than $10 an acre.

* * * * * * *

SEC. 13. That all mineral lands shall be exempted from the grants by this act. But if sections 16 and 36, or any subdivision, or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, the said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State, in lieu thereof, for the use and benefit of the common schools of said State.

SEC. 14. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects.

A. STATE GRANT—IDAHO.

1. STATE SELECTION.
   a. NONMINERAL LANDS.
   b. PUBLICATION OF NOTICE.

1. STATE SELECTION.

a. NONMINERAL LANDS.

Where there is not within the limits of any tract of land to be selected under this act any valuable mineral deposits, it is then subject to the State selection, and the question of its lying within 6 miles of a mining claim is one wholly between the State and the United States.

McFarland v. Idaho, 32 L. D. 107, p. 109.

b. PUBLICATION OF NOTICE.

Under this act there is no necessity for publication with reference to the selection made by the State unless an examination discloses that the land selected is within a township containing any mineral entry, claim, or location, and such examination is to be made by the Land Department preliminary to the call upon the State to publish notice, and until the State is so notified, it is not required to act.

Blake v. Idaho, 37 L. D. 26, p. 27.

26 STAT. 222, p. 224, JULY 10, 1890.

GRANT TO WYOMING—MINERALS EXCEPTED.

AN ACT To provide for the admission of Wyoming.

Be it enacted, etc. * * *

SEC. 11. That in lieu of the grant of land for purposes of internal improvement made to new States by section 8 of the act of September 4, 1841 (5 Stat. 453), which section is hereby repealed as to the State of Wyoming, * * * and in lieu of any grant of saline lands to said State, the following grants of land are hereby made, to

wit: * * * For a hospital for miners who shall become disabled or incapacitated to labor while working in the mines of the State, 30,000 acres. * * *

SEC. 13. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any subdivision or portion of any smaller subdivision thereof in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State.

A. STATE GRANT—WYOMING.

1. MINERAL LANDS SELECTED—RELINQUISHMENT.

Lands, mineral in character, which have been erroneously certified under this act may be relinquished by the State and the State permitted to select other lands in lieu thereof.

Wyoming, In re, 18 L. D. 473.

26 STAT. 197, JULY 16, 1894.

GRANT TO UTAH—SALINES EXCEPTED.

AN ACT To enable the people of Utah to form a constitution and State government, and to be admitted into the Union on an equal footing with the original States.

Be it enacted, etc., That the inhabitants of all that part of the area of the United States now constituting the Territory of Utah, as at present described, may become the State of Utah, as hereinafter provided.

* * * * * * *

SEC. 6. That upon the admission of said State into the Union, sections numbered 2, 16, 32, and 36 in every township of said proposed State, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservation of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

* * * * * * *

SEC. 8. That lands to the extent of two townships in quantity, authorized by the third section of the act of February 21, 1855, to be reserved for the establishment of the University of Utah, are hereby granted to the State of Utah for university purposes, to be held and

used in accordance with the provisions of this section; and any portions of said lands that may not have been selected by said Territory may be selected by said State. That in addition to the above, 110,000 acres of land, to be selected and located as provided in the foregoing section of this act, and including all saline lands in said State, are hereby granted to said State, for the use of the said university, and 200,000 acres for the use of an agricultural college therein. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested and held by said State; and the income thereof to be used exclusively for the purposes of such university and agricultural college respectively.

A. STATE GRANT—UTAH.

1. SALINES PART OF GRANT—DISPOSAL.
2. NATURE OF GRANT—NONMINERAL LANDS ONLY INCLUDED.
3. SALINES—LOCATION UNDER MINING LAWS.
4. MINERAL CHARACTER OF LANDS.
   a. WHAT CONSTITUTES—DETERMINATION.
   b. RETURN OF SURVEYOR GENERAL—EFFECT.
5. TIME OF TAKING EFFECT OF GRANT.

1. SALINES PART OF GRANT—DISPOSAL.

The meaning of section 8 is that the saline lands are to be contained in or comprise a part of the 110,000 acres of land, and this construction is in harmony with grants of saline lands to other States.

Montello Salt Co. v. Utah, 221 U. S. 452, p. 465.

The fact that if the saline lands are included in the 110,000 acres and the State has the right to sell all of them, and that until it declares its intention or makes such selection no rights can be acquired by others under the mining laws, can have no application where it is alleged or shown that the State has selected and received grants from the United States for the full 110,000 acres.

Montello Salt Co. v. Utah, 221 U. S. 452, p. 466.

2. NATURE OF GRANT—NONMINERAL LANDS ONLY INCLUDED.

The grant in section 12 was one in præsenti and based upon the conditions that the land should be selected from unappropriated public lands within the limits of the State and should be nonmineral in character; and while the nonmineral character of the land was not expressly stated, it was clearly implied, because all mineral lands had been reserved to be disposed of under the mineral laws.

Brigham City v. Rich, 34 Utah 130, p. 138.

After the selection by the State of the saline lands in connection with other lands to the amount of 110,000 acres the State, under the applicable statutes and the uniform policy of the Government, could not thereafter select other subsequently discovered saline lands in satisfaction or in lieu of any part of the 110,000 acres already selected.

Montello Salt Co. v. Utah, 221 U. S. 452, p. 466.
See Salt Bluff Placer, In re, 7 L. D. 549.
Southwestern Min. Co., In re, 14 L. D. 597.

Lands appearing upon the selected list and designated as mineral in character upon the strength of the return of the surveyor are not subject to selection by the State under this grant.

Utah, In re, 29 L. D. 69.

Where there is nothing to show that any claim under the mining laws was asserted to lands selected under this act at the time when the right of the State attached, it must be presumed that it passed to the State under the grant, and this presumption will exist until overcome by satisfactory proof to the contrary.

Utah, In re, 32 L. D. 117, p. 118.

3. SALINES—LOCATION UNDER MINING LAWS.

Before the enactment of this statute all saline lands in Utah, as well as elsewhere, were subject to location under the placer mining laws of the United States.

Montello Salt Co. v. Utah, 221 U. S. 452, p. 469.

4. MINERAL CHARACTER OF LANDS.

a. WHAT CONSTITUTES—DETERMINATION.

Lands held and worked, under the mining laws, for their mineral deposits long prior to the admission of Utah as a State, are excepted from the grant for school purposes, and their mineral character established.

Utah v. Allen 27 L. D. 53, p. 54.

Lands containing deposits of guano are mineral lands within the meaning of the United States mining laws and do not pass under this grant.

Richter v. Utah 27 L. D. 95, p. 98.

Lands chiefly valuable for building stone are not excepted by this grant, but pass to the State on its proper selection.

Utah, In re, 29 L. D. 69, p. 70.

A mineral location made prior to the admission of the State is not of itself sufficient to establish the mineral character of the land located so as to defeat the grant to the State, and the presumption is that the land did pass to the State under the grant.

Mahoganey No. 2 Lode Claim, In re, 33 L. D. 37, p. 38.

Applications presented under the mining laws covering parts of a school section are subject to the same disposition as other contest cases.

Mahoganey No. 2 Lode Claim, In re, 33 L. D. 37, p. 38.

b. RETURN OF SURVEYOR GENERAL—EFFECT.

A mere mineral return by a surveyor general does not have the effect of establishing the character of lands as chiefly valuable for mineral and can not in and of itself operate to take lands out of the grant to the State as mineral lands, but this can only be done by proof showing that the lands were at the time when the right of the State would have attached known to contain valuable deposits of mineral and to be chiefly valuable on that account.

Utah, In re, 32 L. D. 117.

5. TIME OF TAKING EFFECT OF GRANT.

Under the provisions of section 6 the right of the State to lands in controversy does not attach until identified by the Government survey.

Mahoganey No. 2 Lode Claim, In re, 33 L. D. 37.
See Colorado, In re, 6 L. D. 412.

The right of the State to lands in controversy does not attach until identified by the Government survey, and if any lands at that time are of known mineral character they are reserved from the operation of the grant.

Mahoganey No. 2 Lode Claim, In re, 33 L. D. 37.
See Utah v. Allen, 27 L. D. 53.
Utah, In re, 32 L. D. 117.

30 STAT. 494, JUNE 21, 1898.

GRANT TO NEW MEXICO—MINERALS EXCEPTED.

AN ACT To make certain grants of land to the Territory of New Mexico, etc.

Be it enacted, etc., That sections numbered 16 and 36 in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any act of Congress, other nonmineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory for the support of common schools, such indemnity lands to be selected within said Territory in such manner as is hereinafter provided: Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act; but such reservations shall be subject to the indemnity provisions of this act.

SEC. 2. That 50 sections of the unappropriated nonmineral lands within said Territory, to be selected and located in legal subdivisions as hereinafter provided in this act, shall be, and are hereby, granted to said Territory for the purpose of erecting public buildings at the capital of the State of New Mexico when said Territory shall become a State and be admitted into the Union, when said capital shall be permanently located by the people of New Mexico, for legislative, executive, and judicial purposes.

SEC. 3. That lands to the extent of two townships in quantity, authorized by the sixth section of the act of July 22, 1854 (10 Stat. 309), to be reserved for the establishment of a university in New Mexico, are hereby granted to the Territory of New Mexico for university purposes, to be held and used in accordance with the provisions in this section; and any portions of said lands that may not have been heretofore selected by said Territory may be selected now by said Territory. That in addition to the above, 65,000 acres of nonmineral, unappropriated, and unoccupied public land, to be selected and located as hereinafter provided, together with all saline lands in said Territory, are hereby granted to the said Territory for the use of said university, and 100,000 acres, to be in like manner selected, for the use of an agricultural college. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested, and the income thereof to be used exclusively for the purposes of such university and agricultural college, respectively.

* * * * * * *

SEC. 6. That in lieu of the grant of land for purposes of internal improvement, made to new States by the eighth section of the act of September 4, 1841 (5 Stat. 455), which section is hereby repealed as to New Mexico, and in lieu of any claim or demand of the State of New Mexico under the act of September 28, 1850 (9 Stat. 519), and section 2429 R. S., making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of

New Mexico, the following grants of nonmineral, and unappropriated land are hereby made to said Territory for the purposes indicated, namely (describing).

* * * * * * *

SEC. 10. That the lands reserved for university purposes, including all saline lands, and sections 16 and 36 reserved for public schools, may be leased under such laws and regulations as may be hereafter prescribed by the legislative assembly of said Territory; but until the meeting of the next legislature of said Territory the governor, secretary of the Territory, and the solicitor general shall constitute a board for the leasing of said lands; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases. And it shall be unlawful to cut, remove, or appropriate in any way any timber growing upon the lands leased under the provisions of this act, and not more than one section of land shall be leased to any one person, corporation, or association of persons, and no lease shall be made for a longer period than 5 years, and all leases shall terminate on the admission of said Territory as a State; and all money received on account of such leases in excess of actual expenses necessarily incurred in connection with the execution thereof shall be placed to the credit of separate funds for the use of said institutions, and shall be paid out only as directed by the legislative assembly of said Territory, and for the purposes indicated herein. * * * Provided, That such legislative assembly may provide for leasing all or any part of the lands granted in this act on the same terms and under the same limitations prescribed above as to the lands that may be leased only, but all leases made under the provisions of this act shall be subject to the approval of the Secretary of the Interior, and all investments made or securities purchased with the proceeds of sales or leases of lands provided for by this act shall be subject to like approval by the Secretary of the Interior.

* * * * * * *

A. STATE GRANT—NEW MEXICO.

1. POLICY OF GOVERNMENT TO RESERVE MINERALS.
2. GRANT OF SALINES—MEANING AND EXTENT.

1. POLICY OF GOVERNMENT TO RESERVE MINERALS.

The policy of the Government has been to reserve lands containing valuable deposits of mineral of every kind from the grants for the benefit of schools, to aid in the construction of railroads, or for other public purposes, whether expressly excluded from such grant or not.

New Mexico, In re, 31 L. D. 389, p. 390.

Mineral lands were expressly excluded from the grant of sections 16 and 36 to the Territory of New Mexico under this act for the support of common schools, and other lands were granted in lieu thereof.

New Mexico, In re, 31 L. D. 389, p. 390.

2. GRANT OF SALINES—MEANING AND EXTENT.

If land was known to be saline at the date of this act it did not pass to the Territory under the grant by section 1; but such lands did pass to the Territory under the grant of saline lands by section 3, and if a tract was not known to be saline in character at the date of the act then it passed to the Territory under the grant by section 1.

New Mexico, In re, 31 L. D. 389, p. 391.

By the term saline lands is meant land chiefly valuable for deposits of chloride of sodium or common salt, and, where the evidence fails to establish the existence in the selected lands of deposits of such salt in sufficient quantities so as to render them chiefly valuable therefor, but does establish the existence of large deposits of gypsum, with chloride of sodium in conjunction, the selection list submitted by a State will be canceled.

New Mexico, In re, 35 L. D. 1, p. 2.
See Alabama, In re, 21 L. D. 320.

Construing this act with all prior legislation on the same subject, Congress had in contemplation through all these, including this act, merely common salt or chloride of sodium in its various forms of existence or deposit, and only lands containing commercially valuable quantities thereof are available under this grant of saline lands to New Mexico.

New Mexico, In re, 35 L. D. 1, p. 7.
See Lovely Placer Claim, In re, 35 L. D. 426.

34 STAT. 267, p. 273, JUNE 16, 1906.

GRANT TO OKLAHOMA AND ARIZONA—MINERALS, OIL AND GAS EXCEPTED.

AN ACT To enable the people of Oklahoma and of the Indian Territory to form a constitution and State government.

Be it enacted, etc., * * *

SEC. 8. * * * Where any part of the lands granted by this act to the State of Oklahoma are valuable for minerals, which terms shall also include gas and oil, such lands shall not be sold by the said State prior to January 1, 1915; but the same may be leased for periods not exceeding five years by the State officers duly authorized for that purpose, such leasing to be made by public competition after not less than 30 days' advertisement in the manner to be prescribed by law, and all such leasing shall be done under sealed bids and awarded to the highest responsible bidder. The leasing shall require and the advertisement shall specify in each case a fixed royalty to be paid by the successful bidder, in addition to any bonus offered for the lease, and all proceeds from leases shall be covered into the fund to which they shall properly belong, and no transfer or assignment of any lease shall be valid or confer any right in the assignee without the consent of the proper State authorities in writing: Provided, however, That agricultural lessees in possession of such lands shall be reimbursed by the mining lessees for all damage done to said agricultural lessees' interest therein by reason of such mining operations. The legislature of the State may prescribe additional legislation governing such leases not in conflict herewith.

* * * * * * *

SEC. 12. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September 4, 1841 (5 Stat. 455), which section is hereby repealed

as to said State, and in lieu of any claim or demand of the State of Oklahoma under the act of September 28, 1850 (9 Stat. 519), and section 2479 R. S., making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of Oklahoma, the following grant of land is hereby made to said State from public lands of the United States within said State, for the purposes indicated, namely: For the benefit of the Oklahoma University, 250,000 acres; for the benefit of the University Preparatory School, 150,000 acres; for the benefit of the Agricultural and Mechanical College, 250,000 acres; for the benefit of the Colored Agricultural and Normal University, 100,000 acres; for the benefit of normal schools, now established or hereafter to be established, 300,000 acres. The lands granted by this section shall be selected by the board for leasing school lands of the Territory of Oklahoma immediately upon the approval of this act. Said selections, as soon as made, shall be certified to the Secretary of the Interior, and the lands so selected shall be thereupon withdrawn from homestead entry.

* * * * * * *

SEC. 29. That 300 sections of the unappropriated nonmineral public lands within said State, to be selected and located in legal subdivisions, as provided in this act, are hereby granted to said State for the purpose of erecting legislative, executive, and judicial public buildings in the same, and for the payment of the bonds heretofore or hereafter issued therefor.

* * * * * * *

SEC. 36. That all mineral lands shall be exempted from the grants made by this act; but if any portion thereof shall be found by the Department of the Interior to be mineral lands, said State, by the commission provided for in section 35 hereof, under the direction of the Secretary of the Interior, is hereby authorized and empowered to select in legal subdivisions an equal quantity of other unappropriated lands in said State in lieu thereof.

A. STATE GRANT—OKLAHOMA.

1. DISPOSAL OF MINERAL LANDS—OIL AND GAS.
2. SCHOOL SECTIONS NOT SUBJECT TO MINING LAWS.
3. GRANT WITHOUT MINERAL EXCEPTION.
4. APPLICATION OF SECTION 36 TO ARIZONA.

1. DISPOSAL OF MINERAL LANDS—OIL AND GAS.

Section 8 makes specific provision for the disposal of the lands granted to Oklahoma where the same are valuable for mineral, and it expressly provides that this term shall include gas and oil, and this removes any question of doubt as to whether the grants made by said act were intended to apply to mineral lands.

Oklahoma, In re, 35 L. D. 509, p. 510.

2. SCHOOL SECTIONS NOT SUBJECT TO MINING LAWS.

The provisions of these sections are wholly inconsistent with the theory that Congress intended to subject the school sections in the Cherokee Outlet to the operation of the mining laws, and these have no application to such lands.

Shirley, In re, 35 L. D. 113, p. 115.

3. GRANT WITHOUT MINERAL EXCEPTION.

The grant made by section 12 to Oklahoma is from the public lands within the State and is without specific mineral exception.

Oklahoma, In re, 35 L. D. 509, p. 510.

4. APPLICATION OF SECTION 36 TO ARIZONA.

Section 36 of this act has reference solely to the grants made to the future State of Arizona and not to the Territory of Oklahoma.

Oklahoma, In re, 35 L. D. 509, p. 511.

34 STAT. 517, CHAP. 3555, JUNE 27, 1906.

GRANT TO WISCONSIN FOR FORESTRY.

AN ACT Granting lands to the State of Wisconsin for forestry purposes.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, directed to cause patents to issue to the State of Wisconsin for not more than 20,000 acres of such unappropriated, unoccupied, nonmineral public lands of the United States north of the township line between townships 33 and 34 north, fourth principal meridian, as may be selected by and within said State for forestry purposes. * * *

36 STAT. 295, APRIL 12, 1910.

SECTIONS RELINQUISHED—WYOMING.

AN ACT Providing that the State of Wyoming be permitted to relinquish to the United States certain lands heretofore selected and to select other lands from the public domain in lieu thereof.

Be it enacted, etc., That upon the delivery to the Secretary of the Interior by the State of Wyoming of its properly executed and duly recorded deed or deeds reconveying to the United States of America, in fee simple, certain lands heretofore selected by and certified to said State under the provisions of an act entitled "An act to provide for the admission of the State of Wyoming into the Union, and for other purposes," approved July 10, 1890 (26 Stat. 222), to wit: * * * the land so described having been acquired under the grant of sections numbered 16 and 36 for the support of common schools; and selected under the grant of 260,000 acres for State charitable, educationable, penal, and reformatory institutions, said selections being approved by the Secretary of the Interior on April 29, 1897, December 14, 1900, and June 3, 1898, the said State shall be authorized and permitted to select an equal number of acres from the unreserved, nonmineral, unappropriated public lands of the United States in said State in the same manner, for the same purposes, and subject to the same conditions and limitations under which the lands so reconveyed were selected and held.

SEC. 2. That the lands so reconveyed shall be restored to and become a part of the public domain and be subject to disposal by the Government in the same manner in which other public lands of a like character are disposed of: Provided, That no portion of the lands so reconveyed shall be subject to settlement, entry, location, or selection

under the public land laws of the United States until the Secretary of the Interior shall decide that such lands are not needed for any public purpose.

36 STAT. 557, pp. 561, 562, 563, 565, 568, 572, 575, JUNE 20, 1910.

GRANT TO ARIZONA AND NEW MEXICO—MINERALS AND SALINES EXCEPTED.

AN ACT To enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

Be it enacted, etc., That the qualified electors of the Territory of New Mexico and Arizona (sec. 19) are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of New Mexico.

* * * * * * *

SEC. 6. That in addition to sections 16 and 36, heretofore granted to the Territory of New Mexico, sections 2 and 32 in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections 2, 16, 32, and 36, or any parts thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of sections 2275 and 2276 of the Revised Statutes are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections 2 and 32, as well as sections 16 and 36, were mentioned therein: * * *

SEC. 7. That in lieu of the grant of land for purposes of internal improvements made to new States by the eighth section of the act of September 4, 1841 (5 Stat. 453), and in lieu of the swamp-land grant made by the act of September 28, 1850 (9 Stat. 519), and section 2479 of the Revised Statutes, and in lieu of the grant of 30,000 acres for each Senator and Representative in Congress, made by the act of July 2, 1862 (12 Stat. 503), which grants are hereby declared not to extend to the said State, and in lieu of the grant of saline lands heretofore made to the Territory of New Mexico for university purposes by section 3 of the act of June 21, 1898, which is hereby repealed, except to the extent of such approved selections of such saline lands as may have been made by said Territory prior to the passage of this act, the following grants of lands are hereby made, to wit:

For university purposes, 200,000 acres; for legislative, executive, and judicial public buildings heretofore erected in said Territory or to be hereafter erected in the proposed State, and for the payment of the bonds heretofore or hereafter issued therefor, 100,000 acres; for insane asylums, 100,000 acres; for penitentiaries, 100,000 acres; for schools and asylums for the deaf, dumb, and the blind, 100,000 acres; for miners' hospitals for disabled miners, 50,000 acres; for normal

schools, 200,000 acres; for state charitable, penal, and reformatory institutions, 100,000 acres; for agricultural and mechanical colleges, 150,000 acres; and the national appropriation heretofore annually paid for the agricultural and mechanical college to said Territory shall, until further order of Congress, continue to be paid to said State for the use of said institution; for school of mines, 150,000 acres.

* * * * * * *

SEC. 11. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction and subject to the approval of the Secretary of the Interior, from the surveyed, unreserved, unappropriated, and nonmineral public lands of the United States within the limits of said State, by a commission composed of the governor, surveyor general, or other officer exercising the functions of a surveyor general, and the attorney general of the said State; and after its admission into the Union said State may procure public lands of the United States within its boundaries to be surveyed with a view to satisfying any public-land grants made to said State in the same manner prescribed for the procurement of such surveys by Washington, Idaho, and other States by the act of Congress approved August 18, 1894 (28 Stat. 394), and the provisions of said act, in so far as they relate to such surveys and the preference right of selection, are hereby extended to the said State of New Mexico. The fees to be paid to the register and receiver for each final location or selection of 160 acres made hereunder shall be $1.

* * * * * * *

SEC. 18. That all saline lands in the proposed State of New Mexico are hereby reserved from entry, location, selection, or settlement until such time as Congress shall hereafter provide for their disposition.

SEC. 19. That the qualified electors of the Territory of Arizona are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of Arizona.

* * * * * * *

SEC. 24. That in addition to sections 16 and 36, heretofore reserved for the Territory of Arizona, sections 2 and 32 in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections 2, 16, 32, and 36, or any parts thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of sections 2275 and 2276 of the Revised Statutes, and acts amendatory thereof or supplementary thereto, are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections 2 and 32, as well as sections 16 and 36, were mentioned therein:

* * * * * * *

SEC. 29. That all lands granted in quantity, or as indemnity, by this act, shall be selected, under the direction and subject to the approval of the Secretary of the Interior, from the surveyed, unreserved, unappropriated, and nonmineral public lands of the United States within the limits of said State, by a commission composed of the governor, surveyor general or other officer exercising the functions of a surveyor general, and the attorney general of the said State; and after its admission into the Union said State may procure public lands of the United States within its boundaries to be surveyed with a view to satisfying any public land grants made to said State in the same manner prescribed for the procurement of such surveys by Washington, Idaho, and other States by the act of Congress approved August 18, 1894 (28 Stat. 394), and the provisions of said act, in so far as they relate to such surveys and the preference right of selection, are hereby extended to the said State of Arizona. The fees to be paid to the register and receiver for each final location or selection of 160 acres made hereunder shall be $1.

36 STAT. 847, chap. 420, JUNE 25, 1910.

COLLEGE GRANT TO COLORADO.

AN ACT Granting certain public lands to the State of Colorada for the use of the State Agricultural College, for agriculture, forestry, and other purposes.

Be it enacted, etc., That the Secretary of the Interior is hereby authorized and directed to convey to the State of Colorado, for the use and benefit of the State Agricultural College, at Fort Collins, Colo., for experimental, educational, and kindred uses in forestry, agriculture, horticulture, grazing, stock raising, and such other uses included in the work of experiments and instruction at said college, and the experiment station connected therewith, 1,600 acres of vacant, unoccupied, unentered, and nonmineral land, or so much thereof as the State board of agriculture may select and designate, upon the payment therefor of the sum of $1.25 per acre.

SEC. 2. That said land shall be selected by said State board of agriculture from any vacant, unoccupied, and unentered, nonmineral public land in township 7 north, ranges 70, 71, 72, 73, and 74 west, of the sixth principal meridian, in the county of Larimer, State of Colorado, and the tracts so selected shall not contain less than 40 nor more than 160 acres each.

36 STAT. 961, MARCH 1, 1911.

GRANT TO PROTECT WATER SHEDS.

AN ACT To enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers.

Be it enacted, etc., That the consent of the Congress of the United States is hereby given to each of the several States of the Union to enter into any agreement or compact, not in conflict with any law of the United States, with any other State or States for the purpose of conserving the forests and the water supply of the States entering into such agreement or compact.

* * * * * * *

SEC. 9. That such acquisition may in any case be conditioned upon the exception and reservation to the owner from whom title passes to the United States of the minerals and of the merchantable timber, or either or any part of them, within or upon such lands at the date of the conveyance, but in every case such exception and reservation and the time within which such timber shall be removed and the rules and regulations under which the cutting and removal of such timber and the mining and removal of such minerals shall be done shall be expressed in the written instrument of conveyance, and thereafter the mining, cutting, and removal of the minerals and timber so excepted and reserved shall be done only under and in obedience to the rules and regulations so expressed.

* * * * * * *

II. CITIES, TOWNS, AND CORPORATIONS.

30 STAT. 497, JUNE 21, 1898.

LANDS FOR WATER SUPPLY—MINERALS RESERVED.

AN ACT Granting certain lands to Santa Barbara, California.

Be it enacted, etc., That the following-described tracts of land, situate in the county of Santa Barbara and State of California, described as follows: (Here follows description), be, and the same are hereby, granted and conveyed to the city of Santa Barbara, in the county of Santa Barbara, and State of California, to have and to hold said lands to its use and behoof forever, for the purpose of developing a water supply; * * * Provided, That said city shall pay for said land so selected the sum of $1.25 per acre, and that no title to mineral, coal, or oil lands within the said tract shall pass under the provisions of this act.

36 STAT. 459, p. 461, chap. 267, JUNE 7, 1910.

GRANT TO CITIES FOR PARKS.

AN ACT Granting public lands to certain cities and towns in the State of Colorado for public-park purposes.

Be it enacted, etc., That there is hereby granted and conveyed to the following-named municipal corporations in the State of Colorado, for public-park purposes and for the use and benefit of the respective cities and towns, the following-described lands, or so much thereof as said cities and towns may desire, to wit: (Names of towns and description of lands). * * *

SEC. 2. That the said conveyance shall be made of the said lands to the said cities and towns, respectively, by the Secretary of the Interior upon the payment by the said cities and towns for the said land or such portions thereof as they may select, respectively, at the rate of $1.25 per acre, and patent issued to said cities and towns for the said land selected, respectively, to have and to hold for public-park purposes, subject to the existing laws and regulations concerning public parks, and that the grant hereby made shall not include any lands which at the date of the issuance of patent shall be covered by a valid, existing, bona fide right or claim initiated under the laws of the United States: Provided, That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the land so granted, and all necessary use of the land for extracting the same: And provided further, That said cities and towns shall not have the right to sell or convey the lands herein granted, or any parts thereof, or to devote the same to any other purpose than as hereinbefore described; and that if the said lands shall not be used as public parks, the same, or such parts thereof not so used, shall revert to the United States.

56974°—Bull. 94, pt 2—15——31

36 STAT. 892, JANUARY 12, 1911.

CEMETERY GRANT—COLORADO.

AN ACT Setting apart a tract of land to be used as a cemetery by the Independent Order of Odd Fellows of Central City, Colo.

Be it enacted, etc., That the Secretary of the Interior be, and is hereby, authorized to set apart, from and out of the mineral lands in Eureka mining district, Gilpin County, State of Colorado (such lands having been heretofore returned to the land office at Central City as mineral lands), a tract of land not exceeding 7 acres in extent, to be used by the Independent Order of Odd Fellows of Central City, Colo., as a cemetery, and being all that portion of the following-described tract not included in any prior valid claim, namely; * * *

SEC. 2. That the Secretary of the Interior be, and he is hereby, authorized to confirm the title to the said described tract of land to the Independent Order of Odd Fellows of Central City, and to cause a patent to be issued for said land to be used for cemetery purposes only: Provided, That nothing contained in this grant shall be so construed as to prevent future applications for the extension of lode claims within the confines of the cemetery and claiming the mineral found there, all mining operations within the bounds of the land there set apart to the Independent Order of Odd Fellows for cemetery purposes to be conducted beneath the surface and so as in no way to disturb the graves of the dead buried there or to mar the surface of the ground.

36 STAT. 1349, CHAP. 255, MARCH 4, 1911.

GRANT TO TRINIDAD FOR WATER STORAGE—MINERALS RESERVED.

AN ACT To grant certain lands to the city of Trinidad, Colo.

Be it enacted, etc., That the following-described lands situate in Las Animas County, Colo., namely: The southwest quarter of the northeast quarter of section 19, in township 32 south, range 68 west of the sixth principal meridian, containing 40 acres, more or less, be, and the same are hereby, granted and conveyed to the city of Trinidad, in the county of Las Animas and State of Colorado, upon the payment of $1.25 per acre by said city to the United States. The above lands are granted and conveyed to the city of Trinidad, to have and hold for its separate use for purposes of water storage and protection of water supply; and for said purposes said city shall forever have the right, in its discretion, to control and use any and all parts of the premises herein conveyed, and in the construction of reservoirs, laying such pipes and mains, and in making such improvements as may be necessary to utilize the water contained in any natural or constructed reservoirs upon said premises, and to protect its water supply from pollution and otherwise: Provided, however, That the grant hereby made is and the patent issued hereunder shall be subject to all legal rights heretofore acquired by any person or persons in or to the above-described premises, or any part thereof, and now existing under and by virtue of the laws of the United States: And provided, That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the lands so granted, and all necessary use of the lands for extracting

the same: And provided further, That the lands hereby authorized to be purchased, as hereinbefore set forth, and all portions thereof shall be held and used by or for the said grantee for the purposes herein specified, and in the event the said lands shall cease to be so used they shall revert to the United States, and this condition shall be expressed in the patent to be issued under the terms of this act.

36 STAT. 1250, MARCH 4, 1911.

GRANTS FOR PARKS—MINERALS RESERVED.

AN ACT Granting public lands to the town of Omak, State of Washington, for public-park purposes.

Be it enacted, etc., That there is hereby granted and conveyed, for public-park purposes, to the town of Omak, county of Okanogan, State of Washington, a municipal corporation, the following described lands, or so much thereof as said town may desire, to wit: All of Government lot numbered 3, section 25; and all of Government lot numbered 4, section 26, both lying in township 34 north, and range 26 east of Willamette meridian, and containing $29\frac{12}{100}$ acres, more or less.

SEC. 2. That the said conveyance shall be made of the said lands to the said town by the Secretary of the Interior upon the payment by the said town for the said lands, or such portion thereof as it may select, at the rate of $1.25 per acre, and patent issued to the said town for the said lands selected, to have and to hold for public-park purposes, subject to the existing laws and regulations concerning public parks, and that the grant hereby made shall not include any lands which at the date of the issuance of patent shall be covered by a valid, existing, bona fide right or claim initiated under the laws of the United States: Provided, That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the lands so granted, and all necessary use of the lands for extracting the same: And provided further, That the said town shall not have the right to sell or convey the lands herein granted, or any parts thereof, or to devote the same to any other purpose than as hereinbefore described, and that if the said lands shall not be used as public parks the same, or such parts thereof not so used, shall revert to the United States.

STONE LANDS.

20 STAT. 89, 1 SUPP. 167, JUNE 3, 1878.

LANDS VALUABLE CHIEFLY FOR STONE.

AN ACT For the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory.

Be it enacted, etc., That surveyed public lands of the United States within the States of California, Oregon and Nevada and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding 160 acres to any one person or association of persons, at the minimum price of $2.50 per acre; and lands valuable chiefly for stone may be sold on the same terms as timber lands: Provided, That nothing herein contained shall defeat or impair any bona fide claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any bona fide settler, or lands containing gold, silver, cinnabar, copper, or coal, or lands selected by the said States under any law of the United States donating lands for internal improvements, education, or other purposes: And provided further, That none of the rights conferred by the act approved July 26, 1866 (14 Stat. 251), entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this act; and all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under and by the provisions of said act; and such rights shall be expressly reserved in any patent issued under this act.

SEC. 2. That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnebar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons what-

soever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the register or the receiver of the land office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

SEC. 3. That upon the filing of said statement, as provided in the second section of this act, the register of the land office, shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of 60 days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said 60 days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May 10, 1872 (17 Stat. 91), the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon: Provided, That any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the Commissioner of the General Land Office.

SEC. 4. That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said States and Territory or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than $100 nor more than $1,000: Provided, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or preparing his farm for tillage, or from taking

the timber necessary to support his improvements, or the taking of timber for the use of the United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act.

A. TIMBER AND STONE ACT.

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1. PURPOSE AND APPLICATION.

See 21 Stat. 140, p. 1216.

One object of the statute was to enable the inhabitants of Nevada, California, and Washington Territory to purchase certain timber lands, and another to prevent the committing of waste on the public lands of the States and Territories named in the act, but it was not the purpose to interfere with the agriculturist and miner who mined without committing actual waste in the cutting of timber from the public lands.

Instructions—Timber Cutting, In re, 1 L. D. 600, p. 601.

This statute was intended to enable settlers in regions where timber is scarce to utilize it so far as is necessary for domestic and mining purposes, and courts will not presume that the regulations adopted by the Secretary of the Interior were intended to place embarrassing and unnecessary restrictions in the way of such use.

United States v. Price Trading Co., 109 Fed. 239, p. 245.
See Stubbs v. United States, 111 Fed. 366, p. 368.

Section 4 of this act was not put in force in the State of Colorado by the amendment of March 3, 1891 (26 Stat. 1093), but it was made applicable and put in force in all the public land States by the act of August 4, 1892 (27 Stat. 348), and this includes the State of Colorado.

Stubbs v. United States, 104 Fed. 988, p. 991.
Stubbs v. United States, 111 Fed. 366, p. 367.

Section 4 of this act was not in force in the State of Colorado on and after March 3, 1891, so far as it related to cutting timber on lands not mineral.

Stubbs v. United States, 104 Fed. 988, p. 991.
See Stubbs v. United States, 111 Fed. 366.

This act, by its terms, is made applicable to the States of California, Oregon, and Nevada, but lands chiefly valuable for stone may, in other States, be located under the placer mining laws.

Freezer v. Sweeney, 8 Mont. 508, p. 513.

The mineral districts of California were included in this act, and all privileges granted to the inhabitants of the mineral districts of the States and Territories named were granted to the inhabitants of such mineral districts of California.

Instructions—Timber Cutting, In re, 1 L. D. 600.

By this amendment the provisions of the statute were extended to all public-land States and as so extended were in force and governed any offenses thereafter committed.

Morgan v. United States, 148 Fed. 189, p. 192.

The statute is based manifestly upon the possibility that much of the timber and stone on such lands would not be needed for years to come, and that the opportunities thus afforded for increased valuation should not be monopolized by a few, but should be open equally to all, so that any such increment might be shared widely by the people of the United States, and was an attempt to widely distribute and popularize the ownership of these lands and Congress did not mean to shut out the citizens of the United States who live at great distances or were physically incapacitated to explore the woods or who could not, for any reason, personally inspect the land.

Hoover v. Salling, 110 Fed. 43.
Robnett v. United States, 169 Fed. 778, p. 781.

2. CONSTRUCTION OF ACT.

Section 4 must be given such a construction as will prohibit the taking of timber from the adjacent public lands by a miner or agriculturist in any case not strictly

within the proviso, as the purpose of the statute is to preserve the timber on the public domain against cutting for any purpose other than that of clearing the land for the purpose of agriculture or the ordinary working of a mining claim by a miner, or for supporting the necessary improvements of each.

United States v. English, 107 Fed. 867, p. 869.
See English v. United States, 116 Fed. 625, p. 626.

The proviso contained in section 4 does not permit the taking of timber from public lands for the conduct of a permanent business, as such use is not an improvement.

United States v. English, 107 Fed. 867, p. 868.
See United States v. Hacker, 73 Fed. 292.

Congress did not by the amendment of August 4, 1892, intend to withdraw the privilege conferred by this statute on residents of the States and Territories where there was a dearth of timber, but continued the right to devote such timber as was found standing on mineral land to agricultural, mining, and other domestic uses.

United States v. Price Trading Co., 109 Fed. 239, p. 248.
Stubbs v. United States, 111 Fed. 366, p. 368.

3. POLICY TO PROTECT TIMBER AND MINERALS.

The policy of the Government, as manifested by this and kindred legislation, was to protect the timber on the public domain except as against certain necessary and specified uses in mining and tilling, and the mischief intended to be prevented outside of the wanton destruction was its sale.

United States v. Hacker, 73 Fed. 292, p. 295.

Lands duly entered for homestead are, under this section, still so far the property of the United States that the Government may protect itself against an unlawful use thereof, and may punish the settler for unlawfully cutting the timber thereon.

Shiver v. United States, 159 U. S. 491, p. 494.

The Government has no adequate way of protecting its public lands and timber by fencing and vigilant attention as an individual owner, and its liberality in allowing timber to be cut on its lands for mining, agricultural, and other specified uses has been used as a screen for the lawless depredator who destroys and sells for profit, and it has long been a matter of complaint that the depredations of these public lands are rapidly destroying the finest forests in the world.

Wooden Ware Co. v. United States, 106 U. S. 432, p. 436.

As between the United States and a settler, the land is deemed the property of the United States, at least so far as may be necessary to protect it from waste.

Shiver v. United States, 159 U. S. 491, p. 499.

The power of regulation and disposition of mineral lands or other lands conferred upon Congress only ceases when all the preliminary acts prescribed by Congress for the acquisition of the title, including the payment of the price for the land, have been performed by the locator or settler.

United States v. Braddock, 50 Fed. 669, p. 673.

4. TIMBER LANDS—DISPOSAL.

This act only authorizes the sale of such surveyed public lands in certain States as were valuable chiefly for timber and stone but unfit for cultivation.

Pierce v. Bond, 22 L. D. 345.

Lands chiefly valuable for timber but unfit for cultivation, within the meaning of this act, include lands valuable for timber where the timber is so extensive and so

dense as to render the tract as a whole, in its present state, substantially unfit for cultivation, though they may be made fit or suitable for cultivation by removing the timber.

United States v. Budd, 144 U. S. 154, p. 166.
Johnson v. Bridal Veil Lumbering Co., 24 Oreg. 182, p. 185.

By this original act and the amendatory act, lands chiefly valuable for timber and for stone were made subject to sale prior to a public offering, but it was not the making of a new classification, and if not purchased under this or the amendatory act in advance of their public offering were then subject to private cash entry the same as other public lands, and the timber and stony character and unfitness for cultivation were regarded merely as a circumstance to be considered in passing on the good faith of the settlement entryman.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 117.
See McKay, In re, 8 L. D. 526.
Wright v. Larson, 7 L. D. 555.
Keller v. Bullington, 11 L. D. 140.

A claimant under this act has the burden of proving that the chief value of land is its timber.

Smith v. Buckley, 15 L. D. 321, p. 324.
See United States v. Budd, 144 U. S. 154.

In a controversy arising upon a protest by a mineral claimant against an application to purchase under this act lands returned as of little value for agricultural purposes and chiefly valuable for the timber thereon, the burden of proof rests upon the mineral protestant.

Purtle v. Steffee, 31 L. D. 400, p. 401.

5. STONE LANDS—DISPOSAL.

This act is a congressional interpretation of the mining laws then in force to the extent of holding that they did not provide a mode of disposing of land valuable chiefly for stone.

Jacob, In re, 7 C. L. O. 83, p. 84.

Congress intended from the whole act to provide a method by which title might be acquired to land which was unfit for cultivation and nonmineral in character containing valuable deposits of stone.

Andrew v. Stuart, 31 L. D. 264, p. 266.

These acts place stone lands in a class separate and distinct from other mineral lands and seem to indicate that the word "mineral," as used in prior statutes, had a limited definition and included metalliferous minerals only.

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 507.
See Northern Pac. R. Co. v. Soderberg, 104 Fed. 425.

The term mineral is more frequently applied to substances containing metals, but in its proper sense includes all fossil bodies or matters dug out of mines, and in this sense beds of stone may be included in the word mineral.

McGlenn v. Wienbroeer, 15 L. D. 370, p. 373.
Roese v. Wainman, 14 M. & W. 859.

Stone taken from quarries is mineral.

McGlenn v. Wienbroeer, 15 L. D. 370, p. 373.
Micklethwait v. Winter, 5 Eng. Law & Eq. 526.

The provisions of this section are inconsistent with the idea that lands chiefly valuable for stone can be located under any mining law.

Wheeler v. Smith, 5 Wash. 704, p. 710.

By this act Congress recognized the fact that a stone quarry is not a placer mine.

Conlin v. Kelly, 12 L. D. 1, p. 3.

The act of August 4, 1892 (27 Stat. 348), did not take building stone outside of the provisions of this statute or add it to the class of substances known as mineral, but only provided that lands chiefly valuable for building stone could be entered under the placer mining laws.

Randolph, In re, 23 L. D. 516, p. 517.
See Hayden v. Jamison, 24 L. D. 403.
Randolph, In re, 23 L. D. 329.

This act in effect amends the mining statutes so as to make lands chiefly valuable for building stone subject to entry under the placer mining laws, but it does not dispense with the rule requiring the discovery and location, and both must precede entry, and when made the claimant is protected in his possessory right so long as he complies with the laws and the regulations.

Randolph, In re, 23 L. D. 329, p. 330.

6. PARTICULAR KINDS OF STONE INCLUDED.

Lands containing valuable building stone are subject to entry under this act.

Jamison v. Hayden, 15 L. D. 276, p. 277.

The presence of fire clay or even coal, timber, and stone lands is no bar to entry under this act.

McIntosh v. Savage, 16 C. L. O. 159.

Lands that are unfit for agriculture and chiefly valuable for a deposit of slate are subject to entry under this act.

Parks v. Hendsch, 12 L. D. 100, p. 101.

Land containing stone suitable for making lime may be properly entered or purchased under the stone and timber act.

Shepherd v. Bird, 17 L. D. 82, p. 84.
See Conlin v. Kelly, 12 L. D. 1.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

Land that is rough and rocky, covered with bowlders and sharp jutting ledges of rock, but wholly unfit for cultivation and containing a valuable ledge or quarry of building granite of great length, is subject to entry under this act, when shown to be more valuable for its stone than for agricultural or grazing purposes.

Mordecai v. California, 17 L. D. 144.
Jacob, In re, 7 C. L. O. 83, p. 84.

7. STONE LANDS EXCEPTED FROM RAILROAD GRANTS.

This statute defines the status of mineral lands included within the limits of the grant to the Northern Pacific Railroad Company and does not include land valuable chiefly for stone.

Northern Pacific R. Co. v. Soderberg, 104 Fed. 425, pp. 429, 430.

An entry under this statute of lands within the indemnity limits under the grant to the Northern Pacific Railroad Company which have been withdrawn and suspended from entry and sale gives the entryman the beneficial interest and equitable title as against the railroad company where it had filed its selection of land but which had not been approved by the Secretary of the Interior.

Hoyt v. Weyerhaeuser, 161 Fed. 324, p. 326.

8. APPLICATION TO PURCHASE.

a. FILING AND EFFECT.

The procedure under this statute embraces, first, a statement verified by oath of the character of the lands, the right of the applicant to enter, and the purpose of his proposed entry, and, second, after notice a hearing either ex parte or upon contest and before allowance of the application the statement must be supported by satisfactory proof, and such statement is simply an initial paper upon which the machinery of the Land Office is to be set in motion, and it is not accepted as proof, nor does it perform the office of proof.

Robnett v. United States, 169 Fed. 778, p. 782.

The mere filing of an application to purchase under this act confers upon the applicant no right as against the United States and until he acquires a vested right in the land it may be withdrawn from sale.

United States v. Braddock, 50 Fed. 669, p. 672.

The second section of this act permits a competent person to file with the register of the proper district a statement of a tract of land he desires to purchase and requires him to show that the same is valuable chiefly for its timber or stone, is uninhabitable, contains no mining or other improvements, and contains no valuable deposits of gold, silver, cinnabar, copper, or coal.

United States v. Braddock, 50 Fed. 669, p. 671.

The filing of the preliminary affidavit does not operate as a complete segregation of the tract from the public lands.

Smith v. Martin, 2 L. D. 33.

An applicant for land under this act has the burden of establishing the fact that the land was of the character mentioned at the date of the hearing.

Smith v. Buckley, 15 L. D. 321, p. 322.
See Hughes v. Tipton, 2 L. D. 334.

No vested right is acquired by an application to purchase land either for the timber or stone until the final proofs have been passed upon and approved by the Land Department.

Board of Control, Canal No. 3 v. Torrence, 32 L. D. 472, p. 474.
See Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S. 301, p. 311.

Under this statute an application to purchase and the payment of the purchase money for such land is equivalent to entry, and no rights are secured prior to such application and payment.

Randolph, In re, 23 L. D. 329, p. 330.
See Hayden v. Jamison, 24 L. D. 404.
Randolph, In re, 23 L. D. 516.

b. MINERAL LANDS NOT SUBJECT TO PURCHASE.

If land applied to be purchased under this act is known to be chiefly valuable for mineral it contains, it is no more subject to a timber and stone application than to the State selection.

McFarland v. Idaho, 32 L. D. 107, p. 109.

This act expressly excludes land containing gold, silver, cinnabar, copper, or coal.

McIntosh v. Savage, 16 C. L. O. 159.

By the express provisions of this section the mineral lands, in the broadest sense of that term, are excluded from the provisions of the chapter.

Instructions—Timber Cutting, In re, 1 L. D. 600, p. 601.

The exception of mineral lands in the grants made by Congress are held to apply only to such lands as were at the time of the grant known to be so valuable for minerals as to justify the expenditure of labor or money for their extraction.

United States v. Plowman, 216 U. S. 372, p. 374.

Prior to this enactment any public lands not excepted by law because of their valuable mineral deposits, salt, or salines in general were not subject to disposal otherwise than under the preemption and homestead laws until after a public cash offering.

Jones v. Aztec Land & Cattle Co., 34 L. D. 115, p. 116.

The question as to whether lands within a timberland entry embraces land of known mineral character must be determined at the date of the purchase and on the subsequent developments.

Chormicle v. Hiller, 26 L. D. 9, p. 14.

This statute mentions both classes of minerals, and the metalliferous and nonmetalliferous are associated together and placed upon an equality, and both are necessarily included in the term mining claim.

Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 240.

Land embraced in a patent issued on a timber and stone entry is not subject to entry under the mining laws, nothwithstanding the fact that the area so patented was embraced in valid and subsisting mining locations at the date of such timber and stone entry, and at that date known to be chiefly valuable for mineral, though the patent under the timber and stone entry might be vacated for fraud.

Robbins, In re, 42 L. D. 481, p. 484.

c. SHOWING AS TO MINERAL CHARACTER OF LAND.

The rights limited by this act and by the amended act can not defeat or impair any bona fide claim under any law of the United States, nor authorize the sale of any mining claim, but an application for purchase must shów that the land applied for contains no mining or other improvements except of a certain designated kind.

Manners Construction Co. v. Rees, 31 L. D. 408, p. 410.

Where it is not shown that prospecting had resulted in the finding of mineral of such character and value as to justify the expenditure of money and labor in extracting it, nor that the indications of mineral were such that a person of ordinary prudence would be justified in the expenditure of his labor and means with a reasonable prospect of success in developing a mine, and in the absence of a showing that the land is mineral in character, the fact that mining locations made were abandoned after improvements had been made thereon raises a presumption that the land does not contain mineral in paying quantities.

Andrew v. Stuart, 31 L. D. 264, p. 265.

Old excavations or unoccupied cabins upon abandoned mineral locations are not such mining or other improvements as except the land on which they are located from purchase under the provision of this act and the amendment.

Andrew v. Stuart, 31 L. D. 264, p. 265.
See Chormicle v. Hiller, 26 L. D. 9.

This act must be given a reasonable construction, and where it appears that a mineral location is based upon a discovery, within its limits, of a vein or lode of quartz-bearing copper and gold, and located in a mineralized belt, and where some considerable work has been done on the claim and the indications are such as would justify a man

of ordinary prudence in expending time and labor in developing the same with a reasonable expectation of finding a valuable mine, this constitutes a mining claim within the meaning of the proviso of this act.

Michie v. Gothberg, 30 L. D. 407, p. 409.

The proviso of this act which says that nothing contained herein shall authorize the sale of any mining claim previous to entry and purchase of a 40-acre tract of land chiefly valuable for stone will not be permitted to include a mining location thereon having for its basis the discovery within its limits of a vein or lode of quartz bearing copper and gold and where the making of such location, the sinking of a cut or shaft in compliance with the statute of Wyoming, and the discovery of a lode or vein of mineral thereon were all prior to the date of the application to purchase and where the intervening time between the date of such location and the filing of the application to purchase was not sufficient to afford the mineral locator a reasonable opportunity to develop his claim and to ascertain the certainty and extent or value of the mineral deposit thereon.

Michie v. Gothberg, 30 L. D. 407, p. 409.

It seems that under this statute abandoned mining claims are subject to entry, notwithstanding the presence of abandoned mining improvements, if the land on which they are situated is not segregated by an existing location of entry.

Chormicle v. Hiller, 26 L. D. 9, p. 14.

No general rule can be given as to what will give notice of mineral character to parties seeking to enter under mineral laws land which at one time may have been regarded as mineral, and worked for mineral deposits, and the fact that such lands may have been at some former time worked for mineral will not defeat an entry under this statute, which is otherwise legal.

Chormicle v. Hiller, 26 L. D. 9, p. 14.

Where a reasonable opportunity for the development of mineral actually discovered and located has not been given between the time of the mineral location and an application to purchase under this act, a reasonable opportunity should be given for the development of mineral.

Purtle v. Steffee, 31 L. D. 400, p. 403.
See Michie v. Gothberg, 30 L. D. 407.

While the statute provides that the applicant must show that such timber land contains no mining or other improvements, yet this is not intended to include as mining improvements old excavations made with a view to mining, as Congress only intended to include mining improvements upon mining claims that were alive and subsisting at the time.

Chormicle v. Hiller, 26 L. D. 9, p. 14.

d. SHOWING AS TO GOOD FAITH.

An applicant under this statute must file with the register a statement under oath to the effect that he, in good faith, is making the purchase for his own exclusive use and benefit and not directly or indirectly for another, and 60 days' notice of the application is required, and an entry is not made until all of the requirements of the act have been complied with.

United States v. Bryan, 29 L. D. 149, p. 151.
See Shepherd v. Bird, 17 L. D. 82.
United States v. Bailey, 17 L. D. 468.
United States v. Searles, 19 L. D. 258, p. 265.

Under this act deception in the final proof can not be established as tending to show fraudulent motive in the original application.

United States v. Kettenbach, 175 Fed. 463, p. 467.
See United States v. Kettenbach, 208 Fed. p. 209.

e. REGULATIONS AS TO SHOWING OF CHARACTER OF LAND.

The regulations require an applicant for a timber and stone entry to state under oath that he is well acquainted with the character of the land, with all the legal subdivisions thereof, and that there is not to his knowledge any vein or lode of quartz or other rock in place bearing mineral or deposits of coal or any placer cement, gravel, or other valuable mineral deposit, and that no portion of the land is claimed for mining purposes, nor has any part been worked for mineral during any part of the year, and that the land is essentially nonmineral, and that his application is not made for the purpose of fraudulently obtaining title to mineral lands.

Bigelow, In re, 20 L. D. 6, p. 7.

There is no authority by which the department may extend the time in which proof and payment may be made for land offered under this act and the amendment thereto.

True, In re, 26 L. D. 529.

f. VERIFICATION BY OATH OF APPLICANT—BASIS OF KNOWLEDGE.

This section requires statements to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land is situated.

United States v. Eddy, 134 Fed. 114, p. 119.

An applicant for the purchase of timber lands under this statute must show by affidavit that it is unfit for cultivation and valuable chiefly for timber, and such affidavit may be predicated upon information and belief, and is not required to be made upon a personal investigation or inspection of the land.

Hoover v. Salling, 110 Fed. 43, p. 46.
Reversing Hoover v. Salling, 102 Fed. 716, p. 719.

This section does not require the applicant for land to show in his sworn statement that he has personally examined the land applied for and that from his personal knowledge it is unfit for cultivation, uninhabited, and valuable chiefly for its timber.

Robnett v. United States, 169 Fed. 778, p. 781.
Williamson v. United States, 207 U. S. 425.

The courts take judicial notice of the qualifications of a receiver of a land office to administer oaths.

United States v. Eddy, 134 Fed. 114, p. 119.

g. QUANTITY OF LAND PURCHASABLE.

This act provides that timber lands may be sold to citizens in quantities not exceeding 160 acres to any one person or association of persons, and a person can not justify the cutting of timber on the public domain by claiming he had purchased more than 160 acres.

Teller v. United States, 113 Fed. 273, p. 276.

h. NOTICE—POSTING AND PUBLISHING.

Section 3 provides that upon filing the statement mentioned in the prior section the local land officer must post notice of the application and the applicant must publish a copy of such notice, and at the expiration of 60 days on proof of publication of certain enumerated facts the applicant shall, upon payment of the required amount,

be entitled to a patent, but this section omits the requirement of any statement regarding a speculative purpose on the part of the applicant, his bona fides, and his intention to acquire the land for himself alone, and he is not required to reiterate at the final hearing his purpose in acquiring title to the land, and this follows under the elementary rule that the inclusion of one is the exclusion of others and the reexacting of a portion only of the requirements is equivalent to an express declaration that none of the requirements can be exacted.

Williamson v. United States, 207 U. S. 425, p. 459.
See Robnett v. United States, 169 Fed. 778, p. 781.
United States v. Kettenbach, 175 Fed. 463, p. 468.

The purpose of posting and publishing notice as required by section 3 is to give notice of application to purchase and an opportunity for adverse claimants to assert their claim.

Chormicle v. Hiller, 26 L. D. 9, p. 15.

i. ENTRY BASED ON FALSE AFFIDAVIT—EFFECT.

A decision of the Secretary of the Interior directing certain entries under this act to be passed to patent is not conclusive where such decision is based upon ex parte affidavits of the entryman which were false, and known to be so by the agent and representative of the patentee, and where it also appears that one of the special agents making the investigation as to the entries was corrupted by the agent of the patentee.

United States v. Smith, 181 Fed. 545, p. 552.

j. VERIFICATION—PERJURY—EFFECT.

By this act a purchaser of surveyed public lands in California, Nevada, Oregon, and Washington, valued chiefly for stone, must swear in his application that he does not seek to purchase the same on speculation, but in good faith for his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract with another by which the title he may acquire is to inure to such other person. Any false swearing in this respect subjects the purchaser to all the penalties of perjury and forfeits the purchase price of the lands.

Hawley v. Diller, 178 U. S. 476, p. 484.

An applicant who swears falsely is subject to the penalties of perjury and may be required to forfeit the money paid for the land, and all rights and title thereto, and the rule as to forfeiture applies to the original entryman and to the transferees of such entryman.

United States v. Miller, 14 L. D. 617, p. 619.

The facts stated in a verified application for a land entry under this act must not only be true when made, but must also be true when the land is paid for, and the certificate of purchase or the receiver's receipt issued that the person entering the land is not then under agreement, either express or implied, to convey such land to another.

United States v. Brace, 149 Fed. 869, p. 873.

In a charge of false swearing under this section it is necessary to allege that the act of swearing falsely was willfully done.

United States v. Eddy, 134 Fed. 114, p. 116.

A person who induces another to make a verified application for the purchase of timberlands under this act, and to make a false oath at the time of the final entry as to the good faith of such applicant, is guilty of subornation of perjury.

United States v. Brace, 149 Fed. 869, p. 871.
See United States v. Budd, 144 U. S. 154.

k. REGISTER TO FURNISH FINAL PROOF OF NOTICE—PUBLICATION.

Under this act the register is required to furnish a stone applicant a copy of the final-proof notice, but the applicant himself shall cause such notice to be published for the necessary length of time in the proper newspaper, but an applicant is not in default for failure to submit proof when he had no knowledge that such notice had been given.

Wells, In re, 33 L. D. 365.

l. CONSPIRACY TO PURCHASE—EFFECT.

An agreement to acquire title to timberland by procuring persons to make application for the land under this act, and the procuring of a large number of persons pursuant to the agreement to make application for entries, the entire expenses being paid by the parties to the agreement, and each applicant to be paid a certain stated amount for his trouble, is sufficient to show that all such entries were fraudulent, and that one of the applicants took the land for his own use and benefit, even though no express agreement was made with the several applicants that the entries should be made for the use and benefit of another.

United States v. Smith, 181 Fed. 545, p. 549.

The crime of conspiracy is consummated when the false swearing in the application for the land under the timber and stone act was done, and the prohibition of the statute applies only to the condition of things existing at that time; and affidavits subsequently filed in the Land Department, though false, are not admissible to show motive at the time of the application.

Williamson v. United States, 207 U. S. 425.
United States v. Biggs, 211 U. S. 507.
Dwinnell v. United States, 186 Fed. 754, p. 759.

In an indictment for conspiracy under this statute it is immaterial that the precise piece or pieces of land to be acquired should have been agreed upon by the alleged conspirators at the time of the formation of the conspiracy, and it is not essential that the identity of the persons to be suborned, or the particular time and place of the subornation, be alleged.

Williamson v. United States, 207 U. S. 425.
Gwinnell v. United States, 186 Fed. 754, p. 758.

The failure or inability of the United States to prove in a criminal case that the defendant had been guilty of a crime under this act neither forfeits its right of property in the timber cut or its right to maintain a civil suit to recover the value of such property.

Stone v. United States, 167 U. S. 178, p. 189.

m. PRIOR AGREEMENT OF APPLICANT TO SELL—EFFECT.

This act does not in any respect limit the dominion which the purchaser has over land after it is purchased from the Government, or restrict the power of alienation, but it only denounces any prior agreement or understanding, and the acting for another in the purchase.

United States v. Budd, 144 U. S. 154, p. 163.
Williamson v. United States, 207 U. S. 425.
United States v. Brace, 149 Fed. 869, p. 874.
United States v. Barber Lumber Co., 172 Fed. 948.
United States v. Kettenbach, 175 Fed. 463.
United States v. Wells, 192 Fed. 870, p. 873.
United States v. Kettenbach, 208 Fed. 209, p. 214.

This statute prohibits a prior agreement to the effect that the title or any part thereof which the purchaser should acquire should be conveyed to another, and does not

permit land to be acquired on speculation for the use or benefit of another; but it permits any citizen to purchase land for his own exclusive use, though he may at the time have in contemplation a future sale of the same for profit.

United States v. Budd, 144 U. S. 154.
United States v. Detroit Timber & Lumber Co., 131 Fed. 668, p. 674.
Olson v. United States, 133 Fed. 849, p. 852.
United States v. Brace, 149 Fed. 869, p. 872.

This act does not forbid an entryman from alienating his interest in his claim, but makes illegal any prior agreement by which an entryman acts for another in the purchase.

Worden v. United States, 204 Fed. 1, p. 4.

n. CONTRACT OF SALE AFTER APPLICATION—VALIDITY.

The fact that an applicant for a patent to land entered by him has, pending the publication of notice of the final hearing, contracted to convey after the receipt of such patent his rights in the land does not operate to forfeit such rights where he has in good faith complied with the requirements of this section of the statute.

Williamson v. United States, 207 U. S. 425, p. 460.
See United States v. Biggs, 211 U. S. 507, p. 519.
Adams v. Church, 193 U. S. 510.

This statute does not limit the dominion which the purchaser has over the land after it is purchased from the Government or restrict in the slightest his power of alienation.

Olson v. United States, 133 Fed. 849, p. 852.
United States v. Budd, 144 U. S. 154.

An applicant for the purchase of timberlands has, after his initial application and before final proof, the right to contract to sell the title thereafter to be acquired and the intending purchaser may lawfully advance to him the money with which to make final proof.

Williamson v. United States, 207 U. S. 425.
United States v. Biggs, 211 U. S. 507.
United States v. Barber Lumber Co., 172 Fed. 948.
United States v. Kettenbach, 175 Fed. 463, p. 464.

Under this statute it is lawful for one desiring to acquire title to timberland to make known his willingness to buy the same at an advance over the Government price, and another person knowing such fact may make an entry with the expectation of selling to such intending purchaser, and an entryman may, at any time after his application, contract to sell to another and the transaction is not illegal if there has been nothing further in the way of communication, contract, or agreement between the parties.

United States v. Barber Lumber Co., 172 Fed. 948, p. 960.

Under this act an applicant, after making his preliminary sworn statement concerning his bona fides and the absence of any agreement with other persons in respect to the title, is not required on his final proof to repeat his bona fides or the absence of any agreement with others in relation to the title of the land, and an indictment for perjury can not be based upon such an affidavit.

Williamson v. United States, 207 U. S. 425, p. 455.
See United States v. Biggs, 211 U. S. 507, p. 520.
United States v. Maid, 116 Fed. 650, p. 652.
Robnett v. United States, 169 Fed. 778, p. 781.

o. BONA FIDE PURCHASER FROM ENTRYMAN—TITLE.

A person with knowledge of fraudulent entries of land under this act can not be a bona fide purchaser of such lands; neither can a corporation formed by him, and the

stock of which is owned by himself and the members of his family, and an action to cancel the patents issued upon such fraudulent entries is not barred as against such a corporation, though it is not made a party to the action until after the expiration of six years.

United States v. Smith, 181 Fed. 545, p. 554.

Under this statute a person making an entry of lands valuable chiefly for stone, acquires only an equity and his vendee of such equitable title can not be regarded as a bona fide purchaser within the meaning of the statute, as a bona fide purchaser can only be such after the Government by its patent has parted with the legal title.

Hawley v. Diller, 178 U. S. 476, pp. 485, 486.
Affirming Diller v. Hawley, 81 Fed. 651, p. 655.

9. AGRICULTURAL SETTLEMENT ON STONE LANDS.

A settlement for agricultural purposes on lands chiefly valuable for timber and stone which are unfit for ordinary purposes must be carefully scrutinized, as the exception in the statute is in favor of bona fide settlers.

Wright v. Larson, 7 L. D. 555, p. 556.
Montayo v. Trujillo, 25 L. D. 475, p. 477.
McKay, In re, 8 L. D. 526.

The fact that when an application for a mining claim was located a homestead entry was of record and uncanceled does not of itself affect the validity of such location, as no vested right to the land had attached under the entry, and until such right should attach the lands belong to the United States, and if mineral in character are subject to location and purchase under the mining laws.

Manners Construction Co. v. Rees, 31 L. D. 408, p. 410.

10. AGRICULTURAL ENTRY NOT PERMITTED UNDER THIS ACT.

Lands in fact mineral are not subject to agricultural entry, but are open to mining location and subject to the provisions of this act.

Bunker Hill, etc., Min etc., Co. v. United States, 226 U. S. 548, p. 549.

Where a tract of land is in fact mineral in character, the title, together with the timber thereon, may be acquired under the mining law; but if the tract is vacant and nonmineral, valuable chiefly for its timber but unfit for cultivation and contains no mining or other improvement, it may be purchased upon the conditions imposed by this act.

Gallagher v. Gray, 35 L. D. 90, p. 91.

11. FORFEITURE OR CANCELLATION OF ENTRY.

Lands regularly entered as chiefly valuable for timber and stone can not be forfeited in the hands of a bona fide purchaser.

Hawley v. Diller, 75 Fed. 946.
See Diller v. Hawley, 81 Fed. 651.

The Land Department may cancel an entry made under this statute when the proof shows that the same was fraudulently made.

Diller v. Hawley, 81 Fed. 651.
Overruling Hawley v. Diller, 75 Fed. 946.

12. RECOVERY OF MONEY ON CANCELLATION OF ENTRY.

An entryman under this statute can not recover the money paid by him on making the entry where the entry has been canceled on the ground of fraud and false swearing.

Emmons v. United States, 175 Fed. 514, p. 516.

A cancellation of timber and stone entries made at a hearing before the Commissioner of the General Land Office, on account of false swearing and fraud upon the part of the entryman, is an adjudication of a fact and is not subject to attack in a collateral proceeding.

Emmons v. United States, 175 Fed. 514, p. 516.

An entryman under this statute whose entry has been canceled at a hearing duly had before the Commissioner of the General Land Office on the ground of fraud and false swearing can not, in an action by him to recover the money paid on such entry, claim that he has not had his day in court within the constitutional provision, as the statute under which the entry is made is both a contract and a law, and he proceeds with notice that if he take a false oath with reference to his entry he can not obtain the land nor recover back his money, and the judgment of the Land Department is conclusive on this question.

Emmons v. United States, 175 Fed. 514, p. 516.

This statute imposes upon a claimant one condition that he shall be subject to the pains and penalties of perjury, and another that he shall forfeit the money paid for the land; but each condition is separate and distinct and neither depends upon the other, and in a proper case the party may be subject to either penalty or in other cases a party may suffer the penalty of both conditions.

Emmons v. United States, 175 Fed. 514, p. 516.

13. PATENT—CANCELLATION.

A patent to timber and stone lands under this act can not be canceled where the entryman or patentee concealed from the land officers immaterial facts in order to obtain the patent to the receipt of which he is undoubtedly entitled.

United States v. Kettenbach, 175 Fed. 463, p. 465.
Reversed in part in United States v. Kettenbach, 208 Fed. 209.

Patents issued under this act may be set aside and canceled for fraud in the patentee in conspiring to purchase entries pursuant to an agreement to transfer the title to persons not bona fide purchasers for value.

United States v. Kettenbach, 208 Fed. 209, p. 213.

14. STATE SELECTIONS—BASIS.

This act shows that Congress supposed stone lands to be selectable by a State, and debars the taking up of deposits of stone in any land selected by a State; and the affidavit required of the claimant by the second section is substantially the usual affidavit which is required to be made by all entrymen of agricultural lands to the effect that the land is nonmineral and is not sought to be entered for speculation.

Wheeler v. Smith, 5 Wash. 704, p. 709.

It is essential to the State's claimed right of indemnity selection that lands intended to be used as the basis therefor shall have been lost to the State by reason of their mineral or saline character or otherwise reserved from the State's grant; but unless they were known to be mineral or saline in character at the time of survey, they were not lost to the State but passed to it under its grant, and no indemnity can be obtained therefor.

Bond v. California, 31 L. D. 34, p. 36.

15. REGULATIONS BY SECRETARY.

While this section provides that effect shall be given to the provisions of this statute by regulations to be prescribed by the Commissioner of the General Land Office, yet

this power can be construed only as authorizing the Commissioner to adopt rules and regulations for the enforcement of the act and not such as are destructive of the rights conferred by the statute, and such rules and regulations can not go beyond the requirements of the act itself.

Williamson v. United States, 207 U. S. 425, p. 462.
Robnett v. United States, 169 Fed. 778, p. 781.

The regulations adopted by the Secretary of the Interior under this statute contemplate that a record shall be kept by persons engaged in operating sawmills or those who are engaged in felling timber on mineral lands and cutting it into some form suitable for building, agriculture, mining, or other domestic uses, and it can not apply to individual ranchmen who cut timber on mineral lands for their own use and who cut a small quantity and sell it to a neighbor for their domestic purposes.

United States v. Price Trading Co., 109 Fed. 239, p. 245.
See Stubbs v. United States, 111 Fed. 366, p. 368.
United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.

16. CUTTING OF TIMBER.

a. CONSTRUCTION AND MEANING OF ACT.

Section 4 is construed as though it read thus: "that after the passage of this act it shall be unlawful to wantonly destroy, cut, or cause or procure to be cut, any timber growing on any lands of the United States, in said States or Territories, or remove, or cause to be removed,any timber from said public lands, with intent to export or dispose of the same," and the proviso to the section is not inconsistent with this interpretation.

United States v. Hacker, 73 Fed. 292, p. 293.
See English v. United States, 116 Fed. 625, p. 626.

The cutting of timber upon mineral lands in California is governed by this statute, and not by the general provisions of the act of June 3, 1878 (20 Stat. 88).

United States v. Benjamin, 21 Fed. 285, p. 287.

b. PURPOSES FOR WHICH TIMBER MAY BE CUT.

The proviso of this section is a specification of the purposes for which timber may be lawfully cut or removed and expressly legalizes some acts both of removal and cutting which would otherwise be forbidden by the body of the act and relate to the removal as well as to the cutting of the timber.

United States v. Hacker, 73 Fed. 292, pp. 293, 295.

The proviso of section 4 limits the scope of the words "with intent to export or dispose of the same," by making it lawful for a miner or homestead settler to cut timber from such land even though with intent at the time to sell it, provided the cutting be done in the necessary preparation of the land for the use for which it was intended.

United States v. Hacker, 73 Fed. 292, p. 295.

The overt acts to which this act relates are the cutting of timber, the destruction of timber, and the removal of timber; and the statement of the intent to export or dispose of such timber concludes the enumeration of all these acts, and an intent to dispose of the timber is wholly inconsistent with its wanton destruction.

United States v. Hacker, 73 Fed. 292, p. 293.

c. WHO PERMITTED TO CUT.

Citizens and residents are permitted to take from nonmineral public lands such timber as they may require in the improvement of their farms or mines, there not being sufficient timber on their respective claims for the uses and purposes specified.

Instructions—Timber Cutting, In re, 1 L. D. 600, p. 602.

The term "taking timber necessary to support their improvements" applied to a miner must mean all the timber he might need to make the working of his mine possible and as to a farmer all the timber he might need for the use of such farm.

Instructions—Timber Cutting, In re, 1 L. D. 600, p. 602.

The right to cut and remove timber from the public nonmineral lands is confined to the resident miner and agriculturist, and it is therefore unlawful for millmen to cut and remove from such public nonmineral lands any timber to be sold in the general market or for exportation or to be used for any purpose other than those specified.

Instructions—Timber Cutting, In re, 1 L. D. 600, p. 603.

Under this section the miner and agriculturist within the mineral districts of California are permitted to go upon the nonmineral lands to procure timber as they may need in the development of their mining claims or for the improvement of their farms; but they are restricted to the use of such timber only as may be actually required for the development and improvement of their particular claims and farms, but they may employ others to procure such timber for them.

Timber Cutting, In re, 1 L. D. 616, p. 617.

Bona fide residents are permitted to cut and remove, or to purchase from others, timber upon the public mineral lands if the same is not intended for export, and if the timber is less than eight inches in diameter, where it is not wantonly wasted or destroyed.

Circular, In re, 1 L. D. 696, p. 698.

The cutting and removing of mesquite is restricted and confined to actual settlers and bona fide residents upon mineral lands and is permitted for building, agricultural, mining, and domestic purposes, and it may be cut and removed from the public mineral lands for sale to any actual settler or resident, but only for uses and purposes described, but such cutting or removing is prohibited if for sale to any railroad as an article of fuel or repair.

Circular, In re, 1 L. D. 696.

Possession of a mining claim in accordance with the provisions of the statute confers the right on a locator to work such claim for precious metal, but confers no right to take timber or otherwise make use of the surface except as may be necessary for mining purposes.

Teller v. United States, 113 Fed. 273, p. 280.
See Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.
United States v. Rizzinelli, 182 Fed. 675, p. 681.

Under this act persons occupying the public lands in Oregon under the mining preemption, or homestead laws may cut and use the timber thereon for the purposes of such occupancy, and may also take other timber from the public lands, if needed, sufficient to maintain the necessary improvements on the land so occupied.

United States v. Smith, 11 Fed. 487, p. 492.

This statute prohibits the cutting or unwarranted destruction of any timber growing on any public lands in California, but permits miners and agriculturists to clear their land in the ordinary working of a mining claim or farm, and take the timber necessary to support their improvements.

United States v. Benjamin, 21 Fed. 285, p. 287.

d. HOMESTEAD SETTLER NOT PERMITTED TO CUT TIMBER.

An entryman of a homestead on the public lands can not, neither can his assignee, justify the cutting and sale of timber under this statute on the ground that the land was in fact mineral and not agricultural.

Bunker Hill, etc., Min., etc., Co. v. United States, 178 Fed. 914.
See Bunker Hill, etc., Min., Co. v. United States, 226 U. S. 548, p. 549.

The purchaser of timber from a person who made a homestead entry on the public lands for agricultural purposes, and who cut and sold the timber thereon to enable him to cultivate the land and to make other uses thereof under the beneficial provisions of the homestead law and thereafter relinquished his homestead entry, can not defend an action by the Government for the price of timber on the ground that the land was in fact mineral and not agricultural.

Bunker Hill, etc., Min., etc., Co. v. United States, 178 Fed. 914, p. 915.
See Bunker Hill, etc., Min., etc., Co. v. United States, 226 U. S. 548, p. 549.

The law relating to homesteads is similar to the mining laws as to the rights of claimants while engaged in perfecting their titles, and for five years the homesteader can cut only such timber as is reasonably incidental to the cultivation of the land, and can not under color of right denude the soil of its timber for the purpose of selling and disposing of the same.

Teller v. United States, 113 Fed. 273, p. 283.
See Shiver v. United States, 159 U. S. 491.
Stone v. United States, 167 U. S. 178.
Conway v. United States, 95 Fed. 615.
Grubbs v. United States, 105 Fed. 314.

e. INDICTMENT FOR CUTTING—SUFFICIENCY.

An indictment under this section for cutting timber on the public lands must allege that the timber was cut with intent to export or dispose of the same.

United States v. Hacker, 73 Fed. 292, p. 296.
See Stubbs v. United States, 111 Fed. 366, p. 367.

f. CRIMINAL LIABILITY—PROOF AND DEFENSE.

Congress, for the purpose of protecting the public domain from the invasion of trespassers, denounced as a crime the cutting of timber on public lands with the intent to export and dispose of the same, and the offense is complete on proof of the cutting on public lands and the admission of the sale.

Teller v. United States, 113 Fed. 273, p. 278.

Under this statute there are three elements of the offense: (1) Cutting timber; (2) from lands known to be public lands; (3) with intent to export or dispose of the same; and when these three elements are shown to exist the crime is complete.

Teller v. United States, 113 Fed. 273. p. 278.

Under these statutes if a person enters upon the unoccupied public lands of the United States, knowing the same to be a part of the public domain, and without complying with the requirements of the statute, or attempting to do so, and cuts or causes to be cut timber growing thereon, he may be convicted.

Teller v. United States, 113 Fed. 273, p. 275.

These statutes make it a misdemeanor for any person to cut timber on the public unoccupied lands with intent to export or dispose of the same.

Teller v. United States, 113 Fed. 273, p. 275.

While it is necessary under this statute to prove a criminal intent in cutting the timber, still if an accused entered upon the public domain, knowing it was such, without having complied with the provisions of the law giving him a right to do so, and cut timber therefrom, a jury would be authorized to find the requisite criminal intent.

Teller v. United States, 113 Fed. 273, p. 278.
See Stone v. United States, 167 U. S. 178, p. 188.

A defendant charged with cutting timber on the public domain can not prove in justification thereof a custom in the immediate vicinity of entering upon lands, and

cutting timber before a patent was obtained, and that the custom was known to the land office, as a general custom to violate a criminal statute can not justify itself, nor can it justify an individual violation of the law.

Teller v. United States, 113 Fed. 273, p. 276.

Where persons who occupy public lands and are engaged in mining or farming and who had in maintaining themselves and their families cut small quantities of cedar posts on such lands and sold the same to a trading company for needed supplies, and the trading company purchased with the expectation of reselling to other farmers and ranchmen in the vicinity, the fact that such trading company kept no record of cutting, as contemplated by the regulations of the Secretary of the Interior, does not of itself impair the title of the trading company.

United States v. Price Trading Co., 109 Fed. 239, p. 246.

While a mining location so far segregates the lands thus located from the public domain that no rival claimant can initiate rights thereon until the first location is avoided and the entry canceled, yet it gives him nothing but the right of present and exclusive possession for the purpose of mining and does not prevent the Government from protecting the surface against waste by criminal prosecutions for cutting timber.

Teller v. United States, 113 Fed. 273, p. 281.
See United States v. Rizzinelli, 182 Fed. 675, p. 683.

The mere application for a patent for mineral lands does not entitle a locator to enter upon the surface and cut and remove the timber thereon, as he could then abandon such application.

Teller v. United States, 113 Fed. 273, p. 282.
See United States v. Nelson, 27 Fed. Cas. 86.

g. TRESPASSER—LIABILITY AND DAMAGES.

The cutting of timber by a miner from the public lands adjacent to his mining claim for use in a quartz mill will not be regarded as a willful trespass where the owner of the claim and of the mill cut it under the belief that he was authorized so to do under the statute, and in such case he will be charged with the value of the timber before it was converted into wood.

United States v. English, 107 Fed. 867, p. 869.
See English v. United States, 116 Fed. 625, p. 627.

The owner of a mining claim is not liable for cutting timber on such claim where he has complied with the requirements of the statute and the rules and regulations prescribed by the Secretary of the Interior thereunder; but the burden of proving these facts rests upon him.

Stubbs v. United States, 104 Fed. 988, p. 991.
Stubbs v. United States, 111 Fed. 366, p. 368.

The 15 townships in the Bitter Root Valley formerly occupied by the Flathead Indians became a part of the general public domain by the act of February 11, 1874 (18 Stat. 15), and a person cutting timber thereon is liable as a trespasser.

United States v. Blendauer, 128 Fed. 910, p. 913.
Overruling United States v. Blendauer, 122 Fed. 703.

When the Government finds its trees and timber in the hands but once removed from willful trespassers and asserts its right to such property by the slow process of the law, the holder can not set up a claim for the value which has been added to such property by the guilty party in the act of cutting down the trees and removing the timber, as this would be giving encouragement and offering a reward to such wrongdoer by providing a safe market for what he has stolen and compensation for the labor he has been compelled to do to make his theft effectual and profitable.

Wooden Ware Co. v. United States, 106 U. S. 432, p. 437.

A civil suit for the conversion of timber under this statute will be supported by proof that the timber was in fact the property of the United States, whether the defendant knew it or not.

Stone v. United States, 167 U. S. 178, p. 188.
See Wooden Ware Co. v. United States, 106 U. S. 432.

27 STAT. 348, 2 SUPP. 65, AUGUST 4, 1892.

LANDS LOCATED FOR BUILDING STONE—PLACER MINING LAWS.

AN ACT To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Be it enacted, etc., That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: Provided, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

SEC. 2. That an act entitled "An act for the sale of timberlands in the States of California, Oregon, Nevada, and Washington Territory," approved June 3, 1878 (20 Stat. 89), be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory," where the same occur in the second and third lines of said act, and insert in lieu thereof the words "public-land States," the purpose of this act being to make said act of June 3, 1878, applicable to all the public-land States.

SEC. 3. That nothing contained in this act shall be construed to repeal section 24 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891 (26 Stat. 1095).

A. STONE LAND PLACER CLAIM ACT.
B. STONE LANDS, p. —.
C. CUTTING TIMBER, p. —.
D. OIL LANDS LOCATED AS PLACER CLAIMS, p. —.

A. STONE LAND PLACER CLAIM ACT.

1. SCOPE OF ACT.
2. AMENDMENT—EFFECT.
3. REPEALING FORCE OF ACT.

1. SCOPE OF ACT.

This act extends the timber and stone act of June 3, 1878, to all the public land States and makes land valuable for building stone subject to entry under the placer mining laws.

Jamison v. Hayden, 15 L. D. 276, p. 277.

By this statute the provisions of the timber and stone act were extended to all the public land States.

Dwinnell v. United States, 186 Fed. 754, p. 757.

The fact that land may possess incidental advantages other than its valuable mineral deposits will not preclude its disposal under the mining laws; but the purpose of

these laws is to insure the extraction and exploitation of mineral deposits rather than the primary nonmineral use of land.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 659.
See United States v. Iron Silver Min. Co., 128 U. S. 673, p. 684.

This statute differs from the general mining laws in two particulars: (1) It requires the lands to be chiefly valuable for building stone; (2) lands chiefly valuable for building stone are not to be withheld or excluded from reservations or grants to States for school purposes.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 657.

This act was intended to and does apply only to deposits of stone of special or peculiar value for structural work, such as the erection of houses, office buildings, and such other recognized commercial uses as will demand and secure the profitable extraction and marketing of the products.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 660.
See Northern Pac. R. Co. v. Soderberg, 188 U. S. 526.

2. AMENDMENT—EFFECT.

By this amended statute the fourth section of the act of June 3, 1878 (20 Stat. 89), was extended to and put in force in all the public-land States, including the State of Colorado.

Stubbs v. United States, 111 Fed. 366.

This amended statute applies to all the public-land States and provides that stone lands may be purchased in small tracts of less than 40 acres, as provided in the placer-mining laws.

Pierce v. Bond, 22 L. D. 345, p. 346.

This act does not withdraw land chiefly valuable for building stone from entry under any existing law applicable thereto.

Hayden v. Jamison, 16 L. D. 537, p. 539.
See Hayden v. Jamison, 24 L. D. 403.

Until this enactment there was no statute allowing lands valuable for stone to be entered under any of the mining laws.

Hayden v. Jamison, 16 L. D. 537, p. 539.

Prior to this act there was no authority to locate and purchase lands chiefly valuable for building stone under the placer-mining laws.

Hayden v. Jamison, 16 L. D. 537.
Clark v. Ervin, 17 L. D. 550, p. 551 (on review).
Thorne v. Kinsey, 18 L. D. 416, p. 417.
Hayden v. Jamison, 26 L. D. 373.
See Conlin v. Kelly, 12 L. D. 1.

3. REPEALING FORCE OF ACT.

This act so far repeals the act of June 3, 1878, and the act of March 3, 1891, as to make the provisions of section 4 of the act of June 3, 1878 (20 Stat. 89), in force in all the public-land States, embracing the State of Colorado.

Stubbs v. United States, 111 Fed. 366, p. 367.
Overruling Stubbs v. United States, 104 Fed. 988.

This act repeals section 2461 R. S. so far as it relates to the cutting or removing of timber from the public lands with intent to export or dispose of the same.

Morgan v. United States, 148 Fed. 189, p. 193.

B. STONE LANDS.

1. ENTRY AS PLACER CLAIMS.
2. MINERAL AND MINERAL LANDS INCLUDE STONE.
3. KINDS OF STONE INCLUDED.
4. KINDS OF STONE NOT INCLUDED.
5. GRANTS FOR SCHOOL PURPOSES.
6. RAILROAD GRANTS DO NOT INCLUDE.
7. ENTRYMAN'S POWER TO SELL.

1. ENTRY AS PLACER CLAIMS.

Land containing stone valuable for general building purposes only was not subject to entry under the mining laws prior to the passage of this act.

Minnekahta Stone Mine, In re, 15 L. D. 256.
See Conlin v. Kelly, 12 L. D. 1.

Under this act lands chiefly valuable for building stone may be entered as a placer-mining claim if it has not been reserved for the benefit of public schools or donated to a State.

Minnekahta Stone Mine, In re, 15 L. D. 256.
Harper, In re, 16 L. D. 110.
Clark v. Ervin, 16 L. D. 122.
South Dakota v. Vermont Stone Co., 16 L. D. 263.
Van Doren v. Plested, 16 L. D. 508, p. 510.
Shepherd v. Bird, 17 L. D. 82, p. 84.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 244.
Hayden v. Jamison, 26 L. D. 373.
Piatt, In re, 33 L. D. 270, p. 271.
Henderson v. Fulton, 35 L. D. 652, p. 664.
Zimmerman v. Brunson, 39 L. D. 310, p. 313.
Meiklejohn v. Hyde, 42 L. D. 144, p. 145.

This act, construed in connection with the act of July 5, 1884 (23 Stat. 104), makes land valuable for building stone within an abandoned military reservation subject to location under placer-mining laws.

Randolph, In re, 23 L. D. 516, p. 518.

The fact that this section provides that lands chiefly valuable for building stone may be entered and title acquired thereto under the laws relating to placer-mining claims does not avail a defendant who does not plead such right and where the evidence was that the notice of his claim posted on the land was dated long after the commencement of the action.

Northern Pac. R. Co. v. Soderberg, 86 Fed. 49, p. 51.

This act authorizes the exploration and occupation of mineral deposits, including stone, and the right granted necessarily carries with it a license to take what may be found in the course of exploration and apply it to the discoverer's own use, and a person acting under this statute in taking stone upon the public domain is not a trespasser.

Sullivan v. Schultz, 22 Mont. 541, p. 546.

2. MINERAL AND MINERAL LANDS INCLUDE STONE.

The term "mineral," as used in this statute, is not merely a synonym for "metal," but is a comprehensive term including every description of stone and rock deposit whether containing metallic substances or entirely nonmetallic.

Northern Pac. R. Co. v. Soderberg, 99 Fed. 506, p. 507.
Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 427.
See Mullan v. United States, 118 U. S. 271.

Stone is regarded in law as mineral, and this term now includes that which is quarried as well as that which is obtained from mines.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 429.
Griffin v. Fellows, 81 Pa. St. 114.
Hartwell v. Camman, 10 N. J. Eq. 128.
Railway Co. v. Checkley, L. R. 4 Eq. 19.
Rosse v. Wainman, 14 Mees. & W. 859.
Micklethwait v. Winter, 5 Eng. L. & Eq. 526.
Hext v. Gill, L. R. 7 Ch. App. 699.
Jamieson v. Railway Co., 6 Scott. L. R. 188.
Attorney General v. Granite Co., 35 Weekly Rep. 617.

Lands more valuable for deposits of stone, or whatever is recognized as mineral, than for agriculture is mineral.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 427.
Maxwell v. Brierly, 10 C. L. O. 50.
McGlenn v. Wienbroeer, 15 L. D. 370, p. 373.

The various acts of Congress relating to mineral lands indicate that Congress intended to include in that term lands chiefly valuable for building stone of superior quality for building and homestead purposes.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425.

Mountain land covered with granite cliffs and rocks, the value of which is in the quarry in the face of the cliff, is mineral land and may be entered as a placer claim.

Northern Pacific R. Co. v. Soderberg, 104 Fed. 425, p. 427.
Bennett, In re, 3 L. D. 116.
Van Doren v. Plested, 16 L. D. 508.
Gibson, In re, 21 L. D. 327, p. 329.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233.
Meiklejohn v. Hyde, 42 L. D. 144, p. 147.

3. KINDS OF STONE INCLUDED.

Lands valuable for deposits of granite are mineral and may be located as placer mining claims.

Meiklejohn v. Hyde, 42 L. D. 144, p. 146.

Lands valuable solely or chiefly for granite quarries are mineral lands.

Northern Pacific R. Co. v. Soderberg, 188 U. S. 526.
Meiklejohn v. Hyde, 42 L. D. 144, p. 145.

Limestone valuable for mining purposes may be located.

Morrill v. Northern Pac. R. Co., 30 L. D. 475.
Meiklejohn v. Hyde, 42 L. D. 144, p. 147.

Lands more valuable for lime made from the deposits of limestone than for agriculture may be patented under the mining laws.

Gentry, In re, 9 C. L. O. 5.

Land valuable for marble is enterable under placer mining laws.

Pacific Coast Min. Co. v. Northern Pac. R. Co., 25 L. D. 233.
Henderson v. Fulton, 35 L. D. 652.
Meiklejohn v. Hyde, 42 L. D. 144, p. 147.

Under this act land containing valuable deposits of stone used for special purposes may be entered as a placer claim.

McGlenn v. Wienbroeer, 15 L. D. 370, p. 374.
Tam v. Storey, 16 L. D. 282.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233, p. 241.

Lands containing valuable deposits of granite, enterable under this statute as placer mining claims, are not subject to forest lieu selection under the act of June 4, 1897 (30 Stat. 36).

Meiklejohn v. Hyde, 42 L. D. 144, p. 148.

Where a part of a tract for which patent is sought under this act contains no valuable stone subject to a placer location, such part of the tract will be excluded from entry.

Ferrell v. Hoge, 29 L. D. 12, p. 15.

Lands chiefly valuable for stone applies only to deposits of stone of special or peculiar value for structural work, such as the erection of buildings and such other recognized commercial uses as will demand and secure the profitable extraction and marketing of the product; and the act has no application to the vast deposits of low-grade rock possessing no special or peculiar value for structural purposes, and used only for rough work in the immediate vicinity.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 660.
See Conlin v. Kelly, 12 L. D. 1.

4. KINDS OF STONE NOT INCLUDED.

The vast deposits of low-grade rock in the public domain which possess no special or peculiar value for structural building purposes is not subject to disposition either under the placer mining laws or under this act.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 660.

Lands containing a valuable deposit of shale rock that may be used for building purposes or for the construction of roads and streets and the foundation of houses are not mineral within the meaning of the mining laws.

Hughes v. Florida, 42 L. D. 401, p. 403.
See Davis v. Gibson, 38 L. D. 265, p. 266.

Land containing a deposit of gravel and sand not recognized by standard authorities as mineral, though used for general building purposes, is not subject to location as mineral land.

Zimmerman v. Brunson, 39 L. D. 310, p. 313.
Hughes v. Florida, 42 L. D. 401, p. 404.

Stone of such character as may be used in building foundations, fences, abutments, or other rough work is widely distributed throughout all the States of the Union; and it can not be contended that land from which stone is removed by a farmer in the course of his agricultural operations and which he may utilize in constructing fences or in rough work upon his farm, is mineral land, or that his farm is a mine within the meaning of the general mining laws or of this act.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 660.

5. GRANTS FOR SCHOOL PURPOSES.

Lands valuable for building stone were not excepted under this act from a grant to a State for school purposes.

South Dakota Vermont Stone Co., In re, 16 L. D. 263.
Hughes v. Florida, 42 L. D. 401, p. 404.

6. RAILROAD GRANTS DO NOT INCLUDE.

Lands valuable only on account of the stone deposits contained therein do not pass to the Northern Pacific Railroad Co. under its grant, but are subject to placer entry under the mining laws.

Northern Pac. R. Co. v. Soderberg, 104 Fed. 425, p. 428.
Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 L. D. 233.

7. ENTRYMAN'S POWER TO SELL.

While this amendment prohibits an entryman from entering land ostensibly for himself but in reality for another, yet it does not prohibit him from selling the claim to another after he had complied with the requirements as to his original application but before the final proof and hearing.

Williamson v. United States, 207 U. S. 425, p. 460.
United States v. Biggs, 211 U. S. 507, p. 521.
Followed in United States v. Sullenberger, 211 U. S. 522.
United States v. Freeman, 211 U. S. 525.

C. CUTTING TIMBER.

1. CRIMINAL LIABILITY.

A person may be convicted for cutting timber on public lands where the evidence fails to show that such lands were chiefly valuable for minerals, and where he did not cut the timber in the exercise of the privilege conferred by the act of June 3, 1878, and where he kept no books containing a description of the kind and amount of timber cut and of the land from whence it was taken, as required by the regulation of the Interior Department.

Stubbs v. United States, 111 Fed. 366, p. 368.

In an application for a placer patent under this act the good faith of the applicant and the use to which he has devoted or intends to devote the land is a proper element for consideration as incidental to and throwing some light upon the real value and character of the land sought.

Stanislaus Electric Power Co., In re, 41 L. D. 655, p. 659.

D. OIL LANDS LOCATED AS PLACER CLAIMS.

See Oil lands, 29 Stat. 526, p. 1043.

Persons authorized to enter land under the mining laws may locate oil land under this act as placer mining claims, notwithstanding the more recent statute of February 11, 1897 (29 Stat. 526), particularly authorizing such locations, and notwithstanding the adverse hearings of the Land Department to the effect that oil lands could not be located as placer claims under this act.

Producers' Oil Co. v. Hanszen (La.), 61 So. 754, p. 759.
Rives v. Gulf Refining Co. (La.), 62 So. 623, p. 629.

33 STAT. 706, FEBRUARY 8, 1905.

USE OF STONE IN PUBLIC WORKS.

AN ACT Authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law.

Be it enacted, etc., That in carrying out the provisions of the national irrigation law, approved June 17, 1902 (32 Stat. 388), and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him.

TIMBER CUTTING FOR MINING PURPOSES.

4 STAT. 472, MARCH 2, 1831.

CUTTING TIMBER ON MINERAL LANDS—MINING PURPOSES.

AN ACT To provide for the punishment of offenses committed in cutting, destroying, or removing live oak and other timber or trees reserved for naval purposes.

Be it enacted, etc., That if any person or persons shall cut, or cause or procure to be cut, or aid, assist, or be employed in cutting, or shall wantonly destroy, or cause or procure to be wantonly destroyed, or aid, assist, or be employed in wantonly destroying, any live oak or red cedar tree or trees, or other timber standing, growing, or being on any lands of the United States which, in pursuance of any law passed or hereafter to be passed, shall have been reserved or purchased for the use of the United States, for supplying or furnishing therefrom timber for the Navy of the United States; or if any person or persons shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing, from any such lands which shall have been reserved or purchased as aforesaid, any live oak or red cedar tree or trees, or other timber, unless duly authorized so to do by order, in writing, of a competent officer and for the use of the Navy of the United States; or if any person or persons shall cut, or cause or procure to be cut, or aid, or assist, or be employed in cutting, any live oak or red cedar tree or trees or other timber on, or shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing, any live oak or red cedar trees or other timber, from any other lands of the United States, acquired, or hereafter to be acquired, with intent to export, dispose of, use, or employ the same in any manner whatsoever, other than for the use of the Navy of the United States; every such person or persons so offending, on conviction thereof before any court having competent jurisdiction, shall, for every such offense, pay a fine not less than triple the value of the tree or trees or timber so cut, destroyed, or removed, and shall be imprisoned not exceeding 12 months.

* * * * * * *

NOTE.—Section 1 of this act is section 2461 R. S.

A. TIMBER-CUTTING ACT.

1. CONSTRUED WITH LATER ACTS—CUTTING PERMISSIBLE.
2. TIMBER CUTTING ON MINING CLAIMS.

1. CONSTRUED WITH LATER ACTS—CUTTING PERMISSIBLE.

Congress did not authorize the occupation of the public lands for the purpose of agriculture and mining without intending to so modify the operation of the timber act as to permit the occupants thereunder to cut and remove the timber upon their

respective claims so far as the same was necessary for the purpose for which it was occupied, and to that extent this act is repealed by the preemption, homestead, and mining acts.

United States v. Nelson, 27 Fed. Cas. 86.

This statute must be construed in connection with the subsequent acts relating to preemption, homestead, and mining laws, that confer the right of occupation of limited quantities of the public lands upon settlers and miners for agricultural and mining purposes, and are in fact laws upon the same subject.

United States v. Nelson, 27 Fed. Cas. 86.

2. TIMBER CUTTING ON MINING CLAIMS.

As no proof is required as to the amount of mineral deposit in land as a condition on which a mining claim may be located the only security against the law being used as a cover to strip the public lands of their valuable timber is to limit the right of the locator of a mining claim to the use of such timber thereon as is necessary to the actual working of the claim.

United States v. Nelson, 27 Fed. Cas. 86.

In determining whether the locator of a placer mining claim is cutting the timber thereon in good faith and for actual mining purposes, the fact that he has occupied the claim for a period of six years as land containing valuable mineral deposits without availing himself of his right to purchase it at the normal price of $2.50 per acre is not to be overlooked, and especially if it is in a region where the timber is scarce and valuable.

United States v. Nelson, 27 Fed. Cas. 86.

The removal of timber from a mining claim to be justified should proceed with equal pace with the mining operations, and the owner of a claim who desires to go further or faster, and for any reason appropriates the timber to his own use in advance of his mining operations, can only do so safely by paying the purchase price of the land.

United States v. Nelson, 27 Fed. Cas. 86.

Where a locator of a placer mining claim removes and disposes of acres of timber in advance of his mining operations for no better reason than that it is better for the purpose of mining to remove the timber so far in advance of the work as to give opportunity for the stumps to rot, he is in law speculating in United States timber rather than mining for the precious metals.

United States v. Nelson, 27 Fed. Cas. 86.

20 STAT. 88, 1 SUPP. R. S. 166, JUNE 3, 1878.

REMOVING TIMBER FOR MINING PURPOSES.

AN ACT Authorizing the citizens of Colorado, Nevada, and the Territories to use timber for mining purposes.

Be it enacted, etc., That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either

of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: Provided, The provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral lands may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not exceeding $500, and to which may be added imprisonment for any time not exceeding six months.

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1. CONSTRUCTION AND PURPOSE OF ACT.

This statute is a part of the legislation showing the policy of Congress to develop the mineral resources of the country, providing practical legislation to that end, and placing only such restraint upon the settler and mineral explorer as will provide against waste and destruction, and this section must be construed with reference to the conditions prevailing in the mining regions requiring that the taking of timber for mining and domestic purposes shall not be restricted to lands known to contain minerals in paying quantities, but may include such adjacent lands as under all the conditions would not be deemed to be subject to entry except as mineral lands, and it is intended that this right or privilege of cutting timber shall be exercised under such regulations as will preserve the timber for the benefit of the inhabitants engaged in or connected with the mining industry.

United States v. Basic Co., 121 Fed. 504, p. 507.
See United States v. Edwards, 38 Fed. 812.
United States v. Richmond Min. Co., 40 Fed. 415.
Anderson v. United States, 152 Fed. 87, p. 91.

The purpose of this statute was to establish by positive enactment a right long claimed and exercised by lumbermen to appropriate the timber on Government land to manufacture it into lumber and furnish it to the millmen, miners, and farmers of the district who did not care to do the actual cutting and manufacturing for themselves, and its object ought not to be to compel payment for timber so cut, but to prevent unnecessary waste, and by this statute Congress enabled settlers in regions where timber is scarce to utilize it for domestic and mining purposes and to develop the mineral resources of the rough, mountainous districts where agricultural pursuits could not be profitably followed.

United States v. Rossi, 133 Fed. 380, p. 383.

The courts can not import into this act a limitation as to the location of the land from which timber may be taken where Congress has expressly conferrred authority to cut for the purposes stated on the public domain, mineral and not entered, in the State of which the citizen or person may be a resident.

United States v. Edgar, 140 Fed. 655, p. 660.

Congress having by this act designated the extent of the locality from which timber may be cut, it follows that no construction can limit the area and thus abridge or take away from the persons lawfully engaged in the industries designated by Congress the right to enjoy the license given.

United States v. Edgar, 140 Fed. 655, p. 660.

It seems to have been the intention of Congress to enlarge the uses which might be made of timber taken from public lands and for that purpose Congress modified the existing statute on this subject.

Morgan v. United States, 148 Fed. 189, p. 192.

This act was passed to establish by positive enactment a right claimed and exercised without interference on the part of the Government for a period of 30 years, and to prevent absolutely the cutting of timber would compel the abandonment practically of all the mineral regions of the States and Territories named in the act.

Hardin, In re, 1 L. D. 597, p. 598.

The object of this act was to enable the inhabitants of the States and Territories named to fell and remove the timber from that class of the public lands withheld from the operations of the preemption and homestead laws, which by existing laws they were not permitted to do.

Instructions—Timber Cutting, 1 L. D. 600.

By this and the act of June 3, 1878 (20 Stat. 89), the scope and operation of the offenses mentioned in the prior statute were extended from cutting, removing, or wanton destruction of timber growing on lands purchased or reserved by the United States for certain uses so as to embrace within their denunication the cutting, removing, or wanton destruction of timber growing on any of the public lands of the United States.

Morgan v. United States, 148 Fed. 189, p. 192.

This act is restricted in its operations to lands subject to entry under the mining laws, and it is the character of the entry by which they may be appropriated and not the character of the lands themselves, that determine the right to use timber for mining purposes.

Truan, In re, 2 L. D. 827.

It was the intention of Congress by this act to encourage and develop the industry of mining and to enable miners to make every use of the timber on mineral lands in the development of their mines and for all purposes properly classed under the head of mining, and miners are not restricted in such use in the employment of timber in the mine itself, but its application and use was intended to be granted in many ways requisite and necessary for the proper development of the industry.

United States v. United Verde Copper Co., 8 Ariz. 186, p. 190; 71 Pac. 954.

2. STATES IN WHICH CUTTING IS PERMITTED.

This statute provides that bona fide residents of certain States and Territories and all mineral districts are permitted to cut and remove for building, agricultural, mining, or other domestic purposes any timber or trees growing on the public mineral lands and not subject to entry except for minerals.

English v. United States, 116 Fed. 625, p. 626.

This act, permitting residents of Colorado, Nevada, and the Territories and other mineral districts of the United States to cut timber for certain purposes upon the mineral lands, does not apply to California.

United States v. Benjamin, 21 Fed. 285, p. 286.
See Yosemite National Park, In re, 25 L. D. 48, p. 51.

This statute does not in terms apply to the State of Oregon, and the phrase "other mineral districts of the United States" is not intended to include the State of Oregon, as there is no such mineral districts therein.

United States v. Smith, 11 Fed. 487, p. 491.
United States v. Benjamin, 21 Fed. 285, p. 286.
United States v. English, 107 Fed. 867, p. 868.
English v. United States, 116 Fed. 625, p. 626.

3. MINING DISTRICTS—MEANING.

The land districts in mining States like Colorado and Nevada are sometimes spoken of as mineral districts and from this the phrase found its way into this act, and while there are some mineral lands and mining districts, it is not known that there are any considerable or contiguous sections of country to which the term "mineral district" could be properly applied, and there is none to which it is applied by law.

United States v. Smith, 11 Fed. 487, p. 491.

If mineral districts are found outside of the States and Territories named in the act, such districts are included in the provisions of the act as fully as if the States containing such mineral districts had been specifically named.

Instructions—Timber Cutting, 1 L. D. 600.

The words "all other mineral districts of the United States" in this act include the mineral districts of California, and the rights and privileges granted to the citizens of Colorado, Nevada, and the Territories to fell and remove timber for mining, agricultural, and other domestic purposes from the public mineral lands are given to the citizens and residents of the mineral districts of California.

Timber cutting, In re, 1 L. D. 616, p. 617.

There is no section of the State of Oregon known and defined as a mineral district.

United States v. Smith, 11 Fed. 487, p. 490.

4. RESIDENTS AUTHORIZED TO CUT.

Bona fide residents of Colorado, Nevada, New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, and Montana are authorized to cut timber growing on mining lands for certain purposes.

United States v. Copper Queen Min. Co., 185 U. S. 495, p. 496.
United States v. United Verde Copper Co., 196 U. S. 207, p. 210.
United States v. Plowman, 216 U. S. 372.
See United States v. Budd, 43 Fed. 630, p. 631.

A person cutting timber on mineral lands and claiming the provisions of the statute must show he is a bona fide resident.

Powers v. United States, 119 Fed. 562, p. 565.

This act authorizes any citizen of the United States and any bona fide resident of the State of Colorado to cut and remove for building, agricultural, mining, or other domestic purposes any timber or trees growing upon the public lands where such lands are mineral and not subject to entry except for mineral.

Morgan v. United States, 169 Fed. 242, p. 243.

The language used in this act includes aliens as well as citizens, if they are bona fide residents of the States and Territories and districts mentioned.

United States v. Copper Queen Min. Co., 7 Ariz. 80, p. 86, 60 Pac. 885.
See United States v. Copper Queen Min. Co., 185 U. S. 495.

A foreign corporation doing business solely within the State of Idaho is not a bona fide resident within the meaning of this act, and is not authorized or permitted to cut timber for certain purposes on the public mineral lands.

Centerville Mining, etc., Co., In re, 39 L. D. 80, p. 85.

This act authorizes a citizen to enter upon mineral public lands opened to mineral entry to cut timber therefrom for mining purposes.

Bunker Hill, etc., Min., etc., Co. v. United States, 226 U. S. 548, p. 549.

5. LANDS ON WHICH CUTTING IS PERMITTED.

a. MINERAL CHARACTER.

This statute is not limited to land which is or may be actually occupied for mining purposes, and it is not altogether a matter of finding valuable ore or metal in the ground from which timber is taken where the lands described are in a mountain region in the vicinity of valuable mines, and some indications of valuable minerals in them, and are unfit for cultivation or pasturage.

United States v. Edwards, 38 Fed. 812, p. 813.
United States v. Budd, 43 Fed. 630, p. 631.
United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.
Morgan v. United States, 169 Fed. 242, p. 245.

Lands that are mountainous or broken foothills, mineral in character, of little or no value except for mineral, within an organized mining district, itself mineral in character, is mineral land within this statute, permitting the cutting of timber for mining purposes.

United States v. Richmond Min. Co., 40 Fed. 415, p. 418.

The right of a person to cut and remove timber from the land in controversy is dependent upon the land being mineral and not subject to entry under existing laws of the United States except for mineral entry.

Lynch v. United States, 138 Fed. 535, p. 540.

The grant of permission to cut timber, when construed with reference to the conditions existing when the statute was enacted, extends to public mineral lands not subject to entry except for mineral without limitation as to any locality and subject to regulation by rules of the Secretary of the Interior.

United States v. Edgar, 140 Fed. 655, p. 660.

This statute does not contemplate or require that before a citizen can enter upon the land and cut and remove timber there must have been an actual discovery of mineral and development work showing the presence all over it of valuable mineral deposits.

Morgan v. United States, 169 Fed. 242, p. 245.

This act, authorizing citizens of Colorado, Nevada, etc., to use timber for mining and domestic purposes, applies to such mineral lands as are not subject to entry under existing laws of the United States, except for mineral entry in either of such States.

Truan, In re, 2 L. D. 827.

The mere fact that portions of land from which timber was cut in violation of this section contained particles of gold or other valuable deposits, or veins of gold bearing quartz, would not necessarily impress it with the character of mineral land as defined by the statute and within the meaning of this act, but it must be shown that such lands contain metals in quantities sufficient to render it available and valuable for mining purposes.

United States v. Copper Queen Min. Co., 7 Ariz. 80, p. 85.
See United States v. Copper Queen Min. Co., 185 U. S. 495.

Under this statute timber can be cut on lands surveyed and described as having "broken and rocky surface, cut up by ledges and ravines, and with every indication of being mineral ground," and shown in the plat of the Government surveyor as mineral land, though no mines have been actually found or located on the particular subdivisions from which the timber was cut.

United States v. Edwards, 38 Fed. 812.
United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.
Morgan v. United States, 169 Fed. 242, p. 245.

This act authorizes citizens to fell and remove timber from the public domain for mining and domestic purposes, but does not limit the cutting of the timber to mineral lands.

San Juan Lumber Co., In re, 2 L. D. 824.

b. EXTENT OF MINERALS—PROOF.

The question of the character of the land under this statute is always one of fact, and the most satisfactory evidence is the actual use to which such land has been placed by those who occupy it, and while it may not be conclusive evidence, yet the testimony as to the actual use of such land tends to establish its character and is relative and material for that purpose.

Lynch v. United States, 138 Fed. 535, p. 540.

The mere appearance of mineral and the mere presence of color here and there, as in a placer claim, is not sufficient to constitute land mineral, but there must be at least sufficient mineral to induce mining men of experience to go upon the ground and take and work it with the expectation of finding mineral, and this rule applies particularly to a country or district that had during long series of years been thoroughly explored and prospected, and not to a case of newly discovered mineral country, and the circumstances are proper to be considered in connection with the alleged good faith of a person cutting timber from such lands.

Anderson v. United States, 152 Fed. 87, p. 92.

Under this statute a person may lawfully cut timber on lands situated in mountainous, barren regions, unadapted to agriculture and the founding of homes, and which are interspersed with gulches and narrow valleys, and minerals are known to exist at different points therein, and where such timber may be essential not only for direct use in and about the mines to be opened and operated, but for building homes and fences for the use of the people desiring to occupy and develop such communities, and where such lands are not subject to entry under existing laws of the United States except for mineral.

Morgan v. United States, 169 Fed. 242, p. 246.
See United States v. Basic Co., 121 Fed. 504.
United States v. Rossi, 133 Fed. 380.

The right to cut timber under this statute should not be restricted to the spot or minor tract of land on which mining is being actually done, but the citizen may enter upon and take timber from adjacent lands, they being mineral, though no mining development work has been done thereon, and in this sense it is mineral in character if contiguous or near thereto there be lands on which mineral has been actually discovered by development work and the land in question be of like topography or delineation with the same surface indication of what is known as a lead or float in a placer mining region, then the land is mineral within the meaning and intent of this statute.

Morgan v. United States, 169 Fed. 242, p. 247.

If land is worth more for agriculture than mining, it is not mineral land, though it may contain some gold or silver.

United States v. Plowman, 216 U. S. 372, p. 374.

c. COAL LANDS.

Coal lands are not considered mineral lands within the meaning of this act authorizing the use of timber upon lands in Colorado, Nevada, and certain Territories and mining districts, for mining purposes.

Truan, In re, 2 L. D. 827.

Where coal mines exist and the coal can be utilized for fuel purposes the department requires that such coal should be used instead of timber as an article of fuel.

Gregg, In re, 2 L. D. 827.

d. TIMBER LANDS—WHAT CONSTITUTES.

Land to be within the provision of this act must be in its present state, because of its timber growth, substantially unfit for cultivation.

United States v. Budd, 144 U. S. 154, p. 167.
Grenon v. Miller, 39 L. D. 577, p. 580.

Timber of a kind useful for mining purposes and in such location with reference to mines as to give it value for such purposes, and to make the value of the land in excess of its present value for agricultural purposes, makes such land timber land within the meaning of this act.

Grenon v. Miller, 39 L. D. 577, p. 579.

The matter of marketing the timber is not to be a material factor in determining the timber character of land under this act.

Grenon v. Miller, 39 L. D. 577, p. 579.

6. PERSONS AUTHORIZED TO CUT AND USE.

Possession of a mining claim confers the right upon locators to work the claim for precious metals, but confers no right to take the timber thereon except as it may be reasonably necessary in legitimate mining operations, as the mining claim does not divest the legal title in the United States or impair his right to protect the land from trespass and waste.

McQuillan v. Tanana Electric Co., 3 Alaska 110, p. 118.
See Teller v. United States, 113 Fed. 273.
Powers v. United States, 119 Fed. 562.

The locator of a mining claim has the right to cut down or destroy trees where they stand in the way of the process of mining.

United States v. Nelson, 27 Fed. Cas. 86.
Ladda v. Hawley, 57 Cal. 51, p. 55.

Not only is the authority and permission to fell and remove timber and trees extended to cover only the public mineral lands, susceptible of mineral entry alone, but the act does not as to such lands secure to miners of the vicinity an exclusive right of timber appropriation.

Gallagher v. Gray, 35 L. D. 90, p. 91.

7. USES FOR WHICH CUTTING IS PERMITTED.

a. USES NAMED IN STATUTE.

See 26 Stat. 1095, p. 1164.

The uses for which timber may be cut on mineral lands are for building purposes, agriculture, mining, or other domestic purposes.

United States v. United Verde Copper Co., 196 U. S. 207, p. 211.
See United States v. Edgar, 140 Fed. 655, p. 659.

A citizen of the United States resident in Colorado, Nevada, New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana may cut timber on mineral lands for agricultural, mining, or other domestic purposes.

United States v. Lynde, 47 Fed. 297, p. 302.
Anderson v. United States, 152 Fed. 87, p. 89.

This statute permits bona fide residents or mining companies to cut and remove timber from mineral lands for mining, agricultural, and domestic purposes, in accordance with rules and regulations adopted by the Secretary of the Interior.

United States v. Homestake Min. Co., 117 Fed. 481, p. 483.
United States v. Gentry, 119 Fed. 70, p. 72.
See United States v. Mullan Fuel Co., 118 Fed. 663.
Powers v. United States, 119 Fed. 562, p. 563.

The right to cut timber under this act is quite narrow, and the burden of proof is on the party claiming the right.

United States v. Plowman, 216 U. S. 372, p. 374.

b. REDUCTION, SMELTING, ROASTING, ETC.

Reduction of ore, whether mined or purchased, and refining the products thereof, is mining, within this statute permitting the cutting of timber for mining purposes.

United States v. Richmond Min. Co., 40 Fed. 415, p. 419.

As quartz mills and reduction works are indispensable to a mining community the cutting of the timber and the use in such mills and works of such timber is clearly within the provisions of the statute, and the consumer is as fully protected by it as if he consumed it in his dwelling.

Hardin, In re, 1 L. D. 597, p. 598.

Under this act timber on mining lands may be cut and used for smelting purposes, as this is included in the term "or other domestic purposes."

United States v. United Verde Copper Co., 196 U. S. 207, p. 213.
United States v. Richmond Min. Co., 40 Fed. 415.
See United States v. Edgar, 140 Fed. 655, p. 658.

A company that extracts the ore from its mine, carries that part needing such treatment to the roasting dump, and uses wood in roasting therefrom sulphur, arsenic, and other volatile substances, and then runs the ore through its reduction plant and converts the same into a merchantable product, the extraction of such ore from the mines, the roasting of it upon the dumps preparatory for its final reduction in the furnace and their reduction plants established for such purpose, is clearly a part of mining, and the whole process of such extraction and preparation taken together is within the protection of this act.

United States v. United Verde Copper Co., 8 Ariz. 186, p. 194.

The roasting of ore is a part of the process of mining and for which timber on mineral lands may be cut and used.

United States v. United Verde Copper Co., 196 U. S. 207, p. 212.

This act makes provision in certain States and Territories for the free cutting of timber on public lands that are known to be of a strictly mineral character for the particular uses named in the act, and regulations against cutting timber to be used for smelting purposes are invalid.

White, In re, 34 L. D. 78, p. 79.
See City and County of Beaver, In re, 34 L. D. 112.

A corporation engaged in mining and refining bullion may purchase for its uses wood and charcoal made from timber cut from public mineral lands.

United States v. Richmond Min. Co., 40 Fed. 415.
United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.

c. DOMESTIC PURPOSES—MEANING.

The term "other domestic purposes" is not used in this statute in the narrow sense of household purposes, but in the broader sense of other industries in the locality,

including the right of persons cutting and removing timber to sell it for domestic consumption as contradistinguished from exportation from the State.

United States v. United Verde Copper Co., 196 U. S. 207, p. 215.
Morgan v. United States, 169 Fed. 242, p. 246.
See United States v. Richmond Min. Co., 40 Fed. 415.

d. EXPORTING PROHIBITED.

A locator of a mining claim or a person in possession of mineral lands is authorized to cut and remove therefrom any and all timber and trees growing thereon for building, agricultural, mining, or other domestic purposes, but is prohibited from exporting such timber from the State.

Morgan v. United States, 169 Fed. 242, p. 244.

e. POWER TO SELL, BUY, OR EMPLOY OTHERS TO CUT.

Miners and others inhabiting mining districts have the right to cut or employ others to cut the timber from the mineral lands of the United States for domestic purposes.

Breman, In re, 2 L. D. 823.

This act authorizes the cutting of timber on the mineral lands of the United States for domestic uses, and it is not supposed that Congress intended to say to the inhabitants of the mineral regions that they might cut timber for their own use, yet they could not employ others to cut timber for them or purchase it from others who had cut and prepared it for use.

Hardin, In re, 1 L. D., 597.

f. SAWMILL OWNERS—DISPOSAL OF LUMBER.

The owner or manager of a sawmill shall not sell or dispose of timber or lumber made from such timber without taking from the purchaser his written agreement that the same is not to be used except for building, agricultural, mining, or other domestic purposes, and it is not a compliance with this rule to obtain such an agreement three months after the sale or disposal of the timber or lumber, as the object of the rule was to require the person who was taking timber from the mineral lands to keep a record of his transactions and written agreements from his purchasers to the end that the inspectors of the Government might see by the examination of these writings whether or not he was complying with the act of Congress, but the reduction of the agreement to writing within a few hours after the sale or disposal might be a reasonable compliance with the regulation, as it is not imperative that the agreement should be written and signed at the very instant of the sale, but it must be at substantially the time the timber is sold and disposed of.

United States v. Gentry, 119 Fed. 70, p. 72.

Where timber was taken from mineral lands then the cull or rejected lumber may be disposed of by millmen or contractors to miners, settlers, and other bona fide residents of Colorado.

Timber Cutting—Mill Men, In re, 1 L. D. 600, pp. 612, 613, 618.

8. REGULATIONS AS TO CUTTING.

a. AUTHORITY AND EFFECT.

This statute gives the right to cut trees under such rules and regulations as the Secretary of the Interior may provide for the protection of the timber and undergrowth growing upon such lands and for other purposes, and compliance with such rules and

regulations adopted by the Secretary of the Interior is necessary in order to give a license to cut trees or timber, and such license must be specially pleaded as a defense in an action for cutting timber.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 665.
See United States v. Homestake Min. Co., 117 Fed. 481, p. 488.

The rules and regulations provided by the act to be prescribed by the Secretary of the Interior were only intended to furnish detailed instruction as to the manner of taking the timber to prevent waste and unnecessary destruction, and such rules and regulations can not take the place or exceed the terms and requirements of the statute.

United States v. Rossi, 133 Fed. 380, p. 384.
See United States v. Edgar, 140 Fed. 655, p. 658.

b. VALIDITY—RESTRICTING STATUTE.

This statute concerns the public good or the general welfare and pertains to the citizens and bona fide residents of the States and Territories named therein and should be liberally construed, and it will not be supposed that Congress intended to give the Secretary of the Interior the power to annul or limit its effect.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 667.

This act clothes the Secretary of the Interior with power to prescribe rules and regulations concerning the cutting and removal of timber, but he has no power to enlarge or restrict the purposes expressed in the act for which timber may be cut.

United States v. United Verde Copper Co., 8 Ariz. 186, pp. 188, 190.

The regulation of the Secretary of the Interior prohibiting the cutting of timber on mineral lands is an unauthorized restriction of the statute and therefore void.

United States v. United Verde Copper Co., 196 U. S. 207, p. 211.
See United States v. Edgar, 140 Fed. 655, p. 659.

The rules and regulations authorized by the Secretary of the Interior under this section can not limit the rights granted by the statute, and he is not authorized to make any distinction between the lands designated as being mineral in the statute and lands designated by him as "strictly mineral."

United States v. Mullan Fuel Co., 118 Fed. 663, p. 665.
United States v. Copper Queen Min. Co., 7 Ariz. 80, p. 89.
See United States v. Copper Queen Min. Co., 185 U. S. 495.

The rules and regulations adopted by the Secretary of the Interior under this statute upon the subject of cutting and disposing of cordwood should be reasonable and designed to promote the policy of Congress as indicated by this statute.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 667.
See Anchor v. Howe, 50 Fed. 366.

c. REGULATIONS AS TO SIZE OF TREES.

According to the regulations prescribed under this act the cutting of trees is limited to those less than 8 inches in diameter.

Timber Cutting, In re, 1 L. D. 600, pp. 602, 616, 617, 618.

The rules and regulations promulgated by the Secretary of the Interior prohibiting the cutting of timber under 8 inches in diameter on mineral lands are, in effect, a part of this statute, and a person cutting timber in violation of such rules is not relieved from liability because these rules were, pending a prosecution for such violation, repealed, as the cutting of timber was a trespass for which the defendant was liable.

United States v. Williams, 8 Mont. 85, p. 87.
See United States v. Williams, 6 Mont. 379.

d. REGULATION AS TO SAWMILL OWNERS.

The regulations of the Secretary of the Interior require every owner or manager of a sawmill or persons cutting timber to keep a record showing the time when cut, names of parties cutting, description of the land, mineral character of the land, kind and quality of lumber manufactured therefrom and requiring him to take a written agreement from the purchaser that the same should not be used except for building, agricultural, mining, or other domestic purposes.

Powers v. United States, 119 Fed. 562, p. 563.
United States v. Basic Co., 121 Fed. 504, p. 505.

The regulations of the Secretary of the Interior under this act requiring every owner or manager of a sawmill or other person cutting timber under the provisions of this act to keep a record, contemplate the keeping of such record only by persons who make a business of cutting timber on mineral lands and selling it, or who are engaged to a considerable extent in such business, and they do not apply to settlers engaged chiefly in other pursuits who cut small quantities of timber from mineral lands occupied by them.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 666.

9. DUTY OF REGISTERS AND RECEIVERS.

Section 2 of this act requires registers and receivers to ascertain if any timber has been unlawfully cut on mineral lands, and if so, to notify the Commissioner of the General Land Office.

United States v. United Verde Copper Co., 196 U. S. 207, p. 211.

10. PLACER LOCATIONS—FRAUDULENT DESIGN FOR TIMBER CUTTING.

Placer mining locations can not be made as a blind to cover contemplated timber cutting.

Anderson v. United States, 152 Fed. 87, p. 89.

In an action to recover the value of timber alleged to have been unlawfully cut from the public lands, where the defendant justifies on the ground that the land was mineral in character and the timber cut for mining purposes, it is competent to show that the defendant located some 1,200 acres of land as placer mining claims in the names of his friends and members of his family, and that all the land was covered with valuable timber and that no effort was made to work or develop such placer claims except to perform the assessment work necessary to hold them, where it also appeared in evidence that there was not a paying mine either placer or quartz in the entire region of country in which such timber was cut, and that where ledge mines had been formerly located and abandoned and where practically no ore had been taken or shipped from that particular part of the country in nearly a score of years.

Anderson v. United States, 152 Fed. 87, p. 91.

Where a locator has located more than a thousand acres of land as placer mining claims in the names of his friends and members of his family, and has cut from such lands the valuable timber with which it was covered, a jury in an action for the unlawful cutting of such timber may consider the fact that such locator has done nothing in the way of working or developing the mining claims except to perform the necessary assessment work.

Anderson v. United States, 152 Fed. 87, p. 92.

The qualified locator of a placer mine has a means of protecting the timber growing on his claim and recovering damages from a trespasser who cuts and removes the same.

McQuillan v. Tanana Electric Co., 3 Alaska 110, p. 120.
See Rogers v. Soggs, 22 Cal. 444.
McFeters v. Pierson, 15 Colo. 201.
McDonald v. Montana Wood Co., 14 Mont. 88.

11. ACTION FOR DAMAGES.

a. EVIDENCE AS TO MINERAL CHARACTER OF LAND.

Evidence is admissible in an action by the United States for trespass in cutting timber to show that the timber cut was from mineral claims and that the lands were in fact mineral in character, and that it was cut under contract or permits from the locators of mining claims, as permitted under the statute, for the purpose of establishing a rule as to the measure of damages, though the defendant had not strictly complied with all the rules and regulations of the Land Department for the protection of timber.

Gentry v. United States, 101 Fed. 51, p. 53.
See United States v. Gentry, 119 Fed. 70.

In an action by the Government to recover the value of timber wrongfully and unlawfully cut from the public domain reference may properly be had to the records of the Land Office, where the nature of the land in controversy is a question in issue, for the purpose of determining the character of such lands.

United States v. Van Winkle, 113 Fed. 903, p. 905.
Morgan v. United States, 169 Fed. 242, p. 247.

In an action by the United States to recover the value of timber cut from the public domain, evidence is properly admissible to show the mineral character not only of the land from which the timber was cut, but also to show the mineral character of other lands in the same vicinity for the purpose of showing the extent of the mineral district.

United States v. Rossi, 133 Fed. 380, p. 381.

b. DEFENSE—EVIDENCE OF GOOD FAITH.

The test to determine whether one is a willful or innocent trespasser is not his violation of law in the light of the maxim that every man must know the law, but his honest belief and his actual intention at the time he committed the alleged trespass; but neither a justification of the acts nor any other complete defense is essential to the proof that the person committing such acts was not a willful trespasser.

United States v. Homestake Min. Co., 117 Fed. 481, p. 486.
Durant Min. Co. v. Percy Consol. Min. Co., 93 Fed. 166, p. 168.
United States v. Van Winkle, 113 Fed. 903, p. 905.
Gentry v. United States, 101 Fed. 51, p. 54.

In an action by the Government to recover the value of wood or lumber made from trees and timber wrongfully cut on mineral lands, the defendant may introduce evidence of innocence and good faith in mitigation of damages under the general denial or a plea of justification.

United States v. Homestake Min. Co., 117 Fed. 481, p. 490.
United States v. Van Winkle, 113 Fed. 903, p. 905.
Gentry v. United States, 101 Fed. 51, p. 54.

In an action for wrongfully and unlawfully cutting timber on the public domain a defendant may show that in cutting the timber he acted under what he believed to be the lawful authority of the United States, and it is the province of the jury to determine whether his action was in good faith and to measure the damages accordingly, and if they find he acted in good faith the verdict should be for the value of the timber as cut and not as manufactured into lumber.

United States v. Van Winkle, 113 Fed. 903, p. 905.
See Gentry v. United States, 101 Fed. 51.

In an action of trespass by the United States for damages for cutting timber evidence is admissible for the purpose of showing whether the trespass was intentional or unintentional and in the honest belief that the defendant was lawfully exercising a right which he had or whether he was acting with the willful intention of taking property to which he knew he had no right.

Gentry v. United States, 101 Fed. 51, p. 53.
See United States v. Gentry, 119 Fed. 70.

In an action by the United States for damages for the willful cutting of timber in violation of this statute a defendant may prove, in order to prevent the assessment of punitive or exemplary damages, that he acted under the advice of reputable counsel.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 667.
United States v. Homestake Min. Co., 117 Fed. 481, p. 488.

c. BURDEN OF PROOF.

In an action by the United States to recover for cutting and taking timber on the public domain the burden is on the defendant to show that the timber was taken for the purposes prescribed by the act, and in the manner directed by the rules and regulations of the Secretary of the Interior.

United States v. Basic Co., 121 Fed. 504, p. 508.

A person charged with cutting timber in violation of this statute is not required to prove that the apparent character of the land was such as to inspire in an experienced miner the belief that he could work it as a mine at a profit, and whether or not the land was mineral within the meaning of the statute is a question of fact to be inferred from its surroundings and appearances.

Morgan v. United States, 169 Fed. 242, p. 248.

d. WILLFUL TRESPASS—PROOF AND PRESUMPTION.

In an action for damages for a trespass for cutting timber on public lands, alleged to have been committed willfully, knowingly, and without any permit or authority from the Secretary of the Interior, or without any authority or permit whatever, the Government must prove a willful trespass in order to entitle it to recover the value of the manufactured lumber or wood, even in the absence of an answer, and the legal presumption of a willful trespass from an unexplained cutting may be completely overcome by the evidence on the part of the Government and the recovery limited to the value of the wood and timber in the trees.

United States v. Homestake Min. Co., 117 Fed. 481, p. 489.

The taking of timber from the public lands raises the presumption that it was willfully and intentionally taken, but it is a disputable presumption of fact which may be overcome by proof.

United States v. Homestake Min. Co., 117 Fed. 481, p. 486.

The general rule is that a person taking timber from the lands of the United States is a willful trespasser, but this statute carves an exception out of the rule and gives to the bona fide residents of certain States the lawful authority to cut and remove timber from mineral lands for certain purposes subject to the rules prescribed by the Secretary of the Interior, and the bona fide resident must fairly and fully comply with the requirements of the act and the rules promulgated by the Secretary in order to except himself from the claims of trespassers.

United States v. Gentry, 119 Fed. 70, p. 74.

e. WILLFUL TRESPASS—MEASURE OF DAMAGES.

In an action for damages for a trespass for cutting timber on public lands, where the trespass was willful and intentional, the measure of damages is the value of the manufactured lumber or wood, but where the trespass was committed under a mistaken belief of his right to do so, on the part of the alleged trespasser, the measure of damages is the value of the wood or timber in the trees.

Powers v. United States, 119 Fed. 562, p. 567.
Bolles Wooden Ware Co. v. United States, 106 U. S. 432.
Benson Min., etc., Co. v. Alta Min., etc., Co., 145 U. S. 428.
United Srates v. Mock, 149 U. S. 273.

Fisher v. Brown, 70 Fed. 570.
Gentry v. United States, 101 Fed. 51.
United States v. Van Winkle, 113 Fed. 903.
United States v. Homestake Min. Co., 117 Fed. 481, p. 482, 489.
United States v. Coughanour, 133 Fed. 224, p. 225.
See United States v. Bitter Root Dev. Co., 133 Fed. 274, p. 278.
United States v. Gentry, 119 Fed. 70.
Morgan v. United States, 169 Fed. 242, p. 250.
See Bly v. United States, 3 Fed. Cas. 767.

A person cutting and disposing of timber on a mining claim can not be held in damages as a willful trespasser merely because he failed to keep a record of the details of the transaction as prescribed by the regulations of the Secretary of the Interior, where he believed he was a resident, and his failure to keep such record was due to his ignorance that it was required.

Powers v. United States, 119 Fed. 562, p. 568.

f. RIGHT OF UNITED STATES TO RECOVER.

There can be no recovery by the United States for timber cut on a mining claim and on mineral land where such timber was cut in preparing for and in mining such land.

United States v. Ellis, 122 Fed. 1016, p. 1018.

The United States can not sue and recover from a trespasser for timber cut by him on mineral land, where the same is cut under a homestead entry or residence, unless the land is thrown back upon the United States impaired in value.

United States v. Ellis, 122 Fed. 1016, p. 1017.

The United States can not recover for timber cut on unsurveyed land within the limits of a railroad grant, and which, when surveyed, would fall within the limits of an odd-numbered section, as the Government had parted with its title to such section.

United States v. Mullan Fuel Co., 118 Fed. 663, p. 664.
See Buttz v. Northern Pac. R. Co., 119 U. S. 55.
Northern Pac. R. Co. v. Cannon, 46 Fed. 237.
Denny v. Dodson, 32 Fed. Cas. 899.

Parties cutting timber prior to the date of this act will not be proceded against if the cutting would not be unlawful if done after the enactment thereof.

Breman, In re, 2 L. D. 823, p. 824.

g. LIABILITY OF RAILROAD COMPANY.

This statute expressly denies to railroad companies the right to cut timber on the public mineral lands for any purposes.

United States v. Eureka, etc., R. Co., 40 Fed. 419, p. 421.

A railroad company is liable for timber or wood bought by it for fuel from persons who cut it from the public mineral lands.

United States v. Eureka, etc., R. Co., 40 Fed. 419, p. 421.

A railroad company has no greater right to take timber for construction purposes from mineral public lands than from agricultural public lands, as this section expressly provides that its provisions shall not extend to railroad corporations.

Hall, In re, 2 L. D. 814.

h. CRIMINAL LIABILITY—INTENT.

Under an indictment for cutting timber on mineral lands for an unauthorized purpose the intent is wholly immaterial.

United States v. Reder, 69 Fed. 965.

This statute repealed in part section 2461, and modified the intent necessary to make cutting or removing of timber from the public land an offense, and narrows such intent to a purpose to export or dispose of the same.

Morgan v. United States, 148 Fed. 189, p. 193.

26 STAT. 1093, 1 SUPP. R. S. 939, MARCH 3, 1891.

TIMBER CUTTING ON MINERAL LANDS—AMENDMENT.

(26 Stat. 1095, p. 1099, sec. 8.)

AN ACT To amend section 8 of chapter 561 of an act approved March 3, 1891, entitled "An act to repeal timber-culture laws, and for other purposes."

Be it enacted, etc., That section 8 of an act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, be, and the same is hereby, amended so as to read as follows:

"SEC. 8. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents.

"And in the States of Colorado, Montana, Idaho, North Dakota and South Dakota, Wyoming, and the District of Alaska, and the gold and silver regions of Nevada and the Territory of Utah in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon, it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing, or domestic purposes under rules and regulations made and prescribed by the Secretary of the Interior, and has not been transported out of the same, but nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain, provided, that the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this act, and he may designate the sections or tracts of land where timber may be cut, and it shall not be lawful to cut or remove any timber except as may be prescribed by such rules and regulations, but this act shall not operate to repeal the act of June 3, 1878, providing for the cutting of timber on mineral lands."

A. TIMBER-CUTTING ACT—AMENDMENT.

1. POWER TO PERMIT CUTTING.
2. PURPOSE FOR WHICH TIMBER IS CUT.
3. PRIVILEGE OF CUTTING TIMBER NOT REPEALED.
4. CRIMINAL PROSECUTION—DEFENSE.

1. POWER TO PERMIT CUTTING.

The policy of permitting the carrying on of extensive businesses in the manufacture and sale of lumber not only to the miners but for all the uses of the cities which may grow up by reason of the mining industry, and without compensation to the Government for the timber cut for such lumber, rests with Congress and not with the courts.

United States v. Rossi, 133 Fed. 380.
United States v. Edgar, 140 Fed. 655, p. 661.

2. PURPOSE FOR WHICH TIMBER IS CUT.

The language of this act permits the cutting of timber for agricultural, mining, manufacturing, or domestic purposes and omits the word "other" found in the act of June 3, 1878 (20 Stat. 88), and the act, as worded, authorizes the cutting and use of timber on public lands for smelting purposes, as this is a domestic industry having relation to the industries specifically enumerated.

White, In re, 34 L. D. 78, pp. 80, 82.
See United States v. United Verde Copper Co., 196 U. S. 207.
City and County of Beaver, In re, 34 L. D. 112, p. 113.

3. PRIVILEGE OF CUTTING TIMBER NOT REPEALED.

This statute and the subsequent amendment of 1901 show that Congress by the amendment of August 4, 1892 (27 Stat. 348), did not intend to repeal the privilege granted to cut timber by the original act of June 3, 1878.

United States v. Price Trading Co., 109 Fed. 239, p. 248.
United States v. Edgar, 140 Fed. 655, p. 660.

By the act of August 4, 1892 (27 Stat. 348), this statute and the act of June 3, 1878 (20 Stat. 89), were amended by making section 4 of the latter act extend to all public-land States, and this included the State of Colorado.

Stubbs v. United States, 111 Fed. 366, p. 368.

4. CRIMINAL PROSECUTION—DEFENSE.

This statute provides that in a criminal prosecution or civil action for a trespass in cutting timber on public lands in certain States and Territories, and in certain portions of other States and Territories, the defendant may show that the timber alleged to be cut or removed was so cut or removed for use by a resident for agricultural, manufacturing, mining, or domestic purposes, but this act does not repeal the act of June 3, 1878, providing for cutting timber on mineral lands.

Stubbs v. United States, 104 Fed. 988, p. 989.
Stubbs v. United States, 111 Fed. 366, p. 368.

27 STAT. 444, FEBRUARY 13, 1893.

TIMBER CUTTING ON MINERAL LANDS—AMENDMENT.

AN ACT To extend the provisions of section 8 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, concerning prosecutions for cutting on public lands, to Wyoming, New Mexico, and Arizona.

Be it enacted, etc., That section 8 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, as amended by an act approved March 3, 1891, chapter 559 (26 Stat. 1093), be, and the same is hereby, amended as follows: After the word "Wyoming," in said amended act, insert the words "New Mexico and Arizona."

30 STAT. 597, p. 613; 2 SUPP. 874, p. 875; JULY 1, 1898.

REMOVING TIMBER FOR MINING PURPOSES—AMENDMENT.

AN ACT Making appropriations for sundry civil expenses for the fiscal year ending June 30, 1899.

Be it enacted, etc., * * *

That section 8 of an act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891 (26 Stat. 1095), be, and the same is hereby, amended as follows:

SEC. 8. That it shall be lawful for the Secretary of the Interior to grant permits, under the provisions of the eighth section of the

act of March 3, 1891, to citizens of Idaho and Wyoming to cut timber in the State of Wyoming west of the continental divide, on the Snake River and its tributaries to the boundary line of Idaho, for agricultural, mining, or other domestic purposes, and to remove the timber so cut to the State of Idaho. * * *

See 26 Stat. 1093, p. 1350; 26 Stat. 1095, p. 1099, p. 947.

A. PERMITS TO CUT TIMBER FOR MINING PURPOSES.

This statute authorizes the granting of permits to citizens of the States named to cut timber for agricultural, mining, or other domestic puposes.

White, In re, 34 L. D. 78, p. 81.
See City and County of Beaver, In re, 34 L. D. 112, p. 113.

31 STAT. 1436, 2 SUPP. R. S. 875, MARCH 3, 1901.

TIMBER CUTTING ON MINERAL LANDS—AMENDMENT.

AN ACT To extend the provisions of section 8 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, concerning prosecutions for cutting timber on public lands, to California, Oregon, and Washington.

Be it enacted, etc., That section 8 of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, as amended by an act approved March 3, 1891 (26 Stat. 1093), be, and the same is hereby, amended as follows: After the word "Nevada," in said amended act, insert the words "California, Oregon, and Washington."

30 STAT. 11, p. 36, JUNE 4, 1897.

TIMBER CUTTING ON RESERVATIONS.

AN ACT Making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes.

Be it enacted, etc., * * * The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

35 STAT. 1088, p. 1098, MARCH 4, 1909.

TIMBER CUTTING ON MINING CLAIMS.

AN ACT To codify, revise, and amend the penal laws of the United States.

Be it enacted, etc. * * *

SEC. 49. Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director,

or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than $1,000, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

56974°—Bull. 94, pt 2—15——34

TOWN-SITE SECTIONS AND ACTS.

SECTION 2336, REVISED STATUTES.

Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

A. CONSTRUCTION AND APPLICATION OF SECTION.
B. TOWN-SITE ENTRY, p. 1355.
C. TOWN-SITE LAWS—MINERAL LANDS NOT ACQUIRED UNDER, p. 1355.
D. TOWN SITES, p.1357.
E. TOWN-SITE OWNER, p. 1360.
F. PATENT FOR MINERAL LANDS, p. 1361.
G. TOWN-SITE PATENT, p. 1362.

A. CONSTRUCTION AND APPLICATION OF SECTION.

This section is a precautionary measure or enactment designed for the protection of the miner in pursuance of the already well-defined policy of the Government to encourage the development of its mineral resources.

Hawke v. Deffeback, 4 Dak. 20, p. 28.
See Townsite of Central City, In re, 2 C. L. O. 150.

This section is a part of the same general system of laws designated as the Revised Statutes, approved June 22, 1874, and of which all the mining laws are a part, and this fact alone forbids the idea that this section was intended to operate as a removal or modification of the limitations imposed by the mining laws upon the sale of mineral lands.

Hawke v. Deffeback, 4 Dak. 20, p. 30.

This section is a recognition of both the possessory rights of the miners on the public mineral lands and the authority and validity of the local rules and regulations in relation thereto, though the Government had no intention of parting with its title, and the statute must be construed with others bearing upon the same subject.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, pp. 409, 410.

This section applies only to town lots acquired under the provisions of the preceding sections, which together comprise the acts of July 1, 1864 (13 Stat. 343), and March 3, 1865 (13 Stat. 529), and as no provision then had been made for the acquisition of title to mineral lands nor had there been any statutory regulation of the possessory rights of miners, it seems that the purpose of this section was precautionary and intended to protect any mining rights found to exist within town sites under local customs and regulations recognized by the Government.

Hawke v. Deffeback, 4 Dak. 20, p. 31.
See McDonald v. Hovey, 110 U. S. 619.

B. TOWN-SITE ENTRY.

1. NATURE AND PURPOSE.
2. MADE ON MINERAL LANDS.

1. NATURE AND PURPOSE.

This section provides for the entry of any portion of the public lands occupied as a town site, the entry to be in trust for the use and benefit of the occupants according to their respective interests, subject to local legislative authority, and the right to enter is limited to lands actually occupied by the town, and makes the title to the town lots subject to the possession of mineral claims where such possession is recognized by local authority.

Deffeback v. Hawke, 115 U. S. 392, p. 403.
Davis v. Weibbold, 139 U. S. 507, p. 516.
Golden v. Murphy, 31 Nev. 395, p. 411.

This section, with others, contemplates that towns will exist in mining localities and that entries may be made of such town sites.

Townsite of Butte, In re, 3 C. L. O. 131.

2. MADE ON MINERAL LANDS.

Town sites may be located on mineral land, but the town-site claimants will hold the claim subject to the rights of the mineral claimant.

Smith, In re (on review), 10 L. D. 184.
See Esler v. Townsite of Cooke, 4 L. D. 212.

The town-site laws clearly contemplate that towns will exist in mining locations, and by clear implication town-site entries are to be permitted on mineral land, as indicated by the clause excepting the title to mines from the title acquired by the town.

Townsite of Central City, In re, 2 C. L. O. 150.
See Townsite of Butte, In re, 3 C. L. O. 131.
Townsite of Deadwood, In re, 8 C. L. O. 18.

A placer claim may be used as a town site.

Schwab v. Bean, 86 Fed. 41, p. 43.
See Smelting Co. v. Kemp, 104 U. S. 636.

This section permits town-site entries overlying lode claims.

Townsite of Central City, In re, 2 C. L. O. 150.
Townsite of Deadwood, In re, 8 C. L. O. 18.

Town-site entries are permissible which may embrace within their limits valid mining claims and veins or lodes containing valuable mineral deposits upon which no locations have been made.

Townsite of Eureka Springs v. Conant, 8 C. L. O. 3.

A town-site grant, under this section, is not limited because made upon a part of an original mining location, where such part had been abandoned by the locator marking the boundaries and taking a patent for a small part of his original location under the statute of 1866.

Larned v. Jenkins, 113 Fed. 634, p. 637.

C. TOWN-SITE LAWS—MINERAL LANDS NOT ACQUIRED UNDER.

See sec. 2392, p. 1367.

No title can be acquired under the preemption, homestead, or town-site laws to lands known at the time of sale to be valuable for minerals, and the phrase "known at the

time of sale to be valuable for minerals" is used to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued.

Deffeback v. Hawke, 115 U. S. 392, p. 405.
Smoke House Lode, In re, 4 L. D. 555.
Spong, In re, 5. L. D. 193.
Abercombie, In re, 6 L. D. 393.
Aspen Consol. Min. Co. v. Williams, 27 L. D. 1, p. 15.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.
Reilly v. Berry, 2 Ariz. 272, p. 274.
Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 331.
Richards v. Dower, 81 Cal. 44, p. 51.
Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 252.
Golden v. Murphy, 31 Nev. 395, p. 412.
See Noyes v. Mantle, 127 U. S. 348.
United States v. Iron Silver Min. Co., 128 U. S. 673.
Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co., 143 U. S. 394.
Dower v. Richards, 151 U. S. 658.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378.
Talbott v. King, 6 Mont. 76.

Title from the United States to land known at the time of sale to be valuable for mineral deposit can not be obtained under the preemption, homestead, or town-site laws, but the land must be known at the time to be valuable for mineral or the rule does not apply, and a change in the condition occurring subsequently by the new discovery of a mineral will not affect the title as it passed at the time of the sale.

Harkrader v. Golds'ein, 31 L. D. 87, p. 94.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 328.
See Kern Oil Co. v. Clarke, 30 L. D. 550, p. 556.
Kern Oil Co. v. Clotfelter, 30 L. D. 583.
Kern Oil Co. v. Clarke (on review) 31 L. D. 288.
Gray Eagle Oil Co. v. Clarke (on review), 31 L. D. 303.

Lands known at the time of sale to be valuable for minerals can not be obtained under town-site laws.

Laney, In re, 9 L. D. 83, p. 84.
Pike's Peak Lode, In re, 10 L. D. 200.
Plymouth Lode, In re, 12 L. D. 513, p. 515.

A town-site entry can not be made upon land claimed and held for mineral purposes and such an entry should not be allowed until after due notice to the mineral claimants, and the allowance of such an entry does not impair the right of such mineral claimant.

Golds'ein v. Juneau Townsite, 23 L. D. 417, p. 419. .
See Piru Oil Co., In re, 16 L. D. 117.

The terms "lands known to be valuable for mineral," or "for mineral deposits," or "known mines," or "land containing known mines," are equivalent in meaning. and all such lands and mines are excluded from entry and patent under the town-site laws, and title to such lands does not pass if they were known to be of that character when the town-site entry was made.

Brady v. Harris, 29 L. D. 426, p. 433.
See Steel v. Smelting Co., 106 U. S. 447, p. 449.
Davis v. Weibbold, 139 U. S. 507, p. 524.
Dower v. Richards, 151 U. S. 658, p. 663.

A town-site entry on lands mineral in character should be canceled, but the survey and entry may be amended and patent issued accordingly.

Harkrader v. Goldstein, 31 L. D. 87, p. 89.
See Goldstein v. Juneau Townsite, 23 L. D. 417.

Lands valuable for placer mining claims are not subject to entry for town-site purposes, as the use of the entire surface is necessary to the development of placer claims.

Townsite of Deadwood, In re, 8 C. L. O. 18, p. 19.
Townsite of Deadwood, In re, 8 C. L. O. 153, p. 155.
Townsite of Leadville, In re, 9 C. L. O. 71.
See Van Ocker, In re, 9 C. L. O. 71.

D. TOWN SITES.

1. RIGHT OF CITIZENS TO USE AND BUILD.
2. MINERALS OPEN TO EXPLORATION.
3. MINING LOCATIONS PERMITTED.
4. POSSESSION OF MINERAL CLAIMANT PROTECTED.
5. MINERAL CHARACTER OF LAND—PROOF.
6. MINING LOCATION AS NOTICE.
7. TITLE SUBJECT TO MINERAL RIGHTS AND USES.

1. RIGHT OF CITIZENS TO USE AND BUILD.

The citizens of a town have the same right to build dwelling houses upon the public domain as others have to locate mining claims.

Bonner v. Meikle, 82 Fed. 697, p. 699.

2. MINERALS OPEN TO EXPLORATION.

This section and others relating to town sites recognize the possession of mining claims within their limits and forbid the acquisition of any mine of gold, silver, cinnabar, or copper within them under proceedings by which title to other lands within them is secured, and leaves the mineral deposits within the town site open to exploration and the land open to occupation and purchase in the same manner as other lands containing such minerals.

Steel v. Smelting Co., 106 U. S. 447, p. 450.
Poire v. Wells, 6 Colo. 406, p. 410.
Hawke v. Deffeback, 4 Dak. 20, p. 35.
Pierce v. Sparks, 4 Dak. 1, p. 2.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 516.
Murray v. Buol, 6 Mont. 397, p. 408.

Valuable mineral deposits in town-site lands outside of the patent are open to exploration and purchase the same as those in lands outside of the town site.

Davis v. Weibbold, 139 U. S. 507, p. 529.

Where land is mineral in character it is subject to location under the provisions of the mining law without reference to the relative value of a portion of the tract for town-site purposes.

Kemp v. Starr, 6 C. L. O. 3, p. 4.
See Townsite of Deadwood, In re, 8 C. L. O. 18.

This, with other sections, recognizes the possession of mining claims within town-site limits and forbids the acquisition of any mine of gold, silver, cinnabar, or copper by town-site claimants, and this leaves the mineral deposits within town sites open to exploration the same as such deposits on the public domain.

Poire v. Wells, 6 Colo. 406, p. 411.

No title can be acquired under the provisions of the town-site law to lands known to be valuable for minerals, but such lands are free and open for exploration, occupation, and purchase for mining purposes.

Hawke v. Deffeback, 4 Dak. 20, p. 36.

3. MINING LOCATIONS PERMITTED.

Land embraced within a town site on the public domain and unoccupied is not exempt from location and sale for mining purposes; its exemption is only from settlement and sale under the preemption laws of the United States.

Steel v. Smelting Co., 106 U. S. 447, p. 449.
Hawke v. Deffeback, 4 Dak. 20, p. 35.
Richards v. Dower, 81 Cal. 44, p. 52.
Murray v. Buol, 6 Mont. 397, p. 408.

A miner may acquire for good a right to a mining claim within the limits of the town site, as though his discovery was in a wilderness remote from all settlements, and he is equally entitled to a patent therefor.

Steel v. Smelting Co., 106 U. S. 447, p. 449.
Hawke v. Deffeback, 4 Dak 20, p. 35.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 516.
See Rankin, In re, 7 L. D. 411.

The fact of a town-site settlement on a placer claim and a protest by such settlers will not defeat an entry if it is determined that the land in question is valuable as a placer mining claim.

Ferrell v. Hoge, 18 L. D. 81, p. 83.

4. POSSESSION OF MINERAL CLAIMANT PROTECTED.

This section, in connection with section 2392, must protect a mineral claimant in his possession of a vein or lode, together with the surface as recognized by law.

Rico Townsite, In re, 1 L. D. 556, p. 558.

This section protects the possession of the miner as against the title to town lots and subjects such lots to the necessary use of the mineral vein, and is not in conflict with any later statute on the same subject.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 411.
King v. Thomas, 6 Mont. 409, p. 411.
Chambers v. Jones, 17 Mont. 156, p. 162.

Where a mineral claimant is in possession of a mineral vein, such possession is recognized as a valid one to the full extent of the possession and the necessary use thereof, but if at the time of the taking of a town lot the mineral claimant's rights exist, the lot owner will take his lot subject to the rights of such mineral claimant, and although the lot owner may hold his title and receive a patent under the town-site authorities, still the title of the mineral claimant is not different from what it was before the issue of the town-site patent, but the superiority of the relative rights will depend on priority of location.

Rico Townsite, In re, 1 L. D. 556, p. 558.

The possession referred to in this section means the same as a possession held under the mining statutes.

Townsite of Eureka Springs v. Conant, 8 C. L. O. 3, p. 4.

5. MINERAL CHARACTER OF LAND—PROOF.

This section affords a mineral claimant no relief where he fails to show a valid discovery of mineral and where he had not made a valid location under the mining laws, and was not, in fact, possessed of a mineral vein, and he can not restrain a town-site claimant from interfering with or trespassing upon a pretended mining claim.

Regan v. Whittaker, 14 S. Dak. 373, p. 382.

Where small veins or stringers of quartz bearing gold and silver in varying quantities have been discovered in land claimed and located under the mining laws, and such

land is on a definite mineral belt and in close proximity to other mines, and the evidence indicates that with further development a paying mine might be established, such land is prima facie mineral in character and is not subject to entry for townsite purposes.

Goldstein v. Juneau Townsite, 23 L. D. 417, pp. 421, 422, 423.
Discovery Placer Claim v. Murry, 25 L. D. 460, p. 464.

Land not known to be mineral is not "public mineral land" within the meaning of the statute.

Smith v. Hill, 89 Cal. 122, p. 129.

6. MINING LOCATION AS NOTICE.

The location of a mining claim, and the marking of the exterior boundaries and the issuance of a patent for the same, is notice to the Government and to the public that the patentee or his grantee is the owner of all the exclusive rights and privileges in such tract of land as well as to the vein or lode therein, and is prior and superior to a title by a patent under the town-site act.

Larned v. Jenkins, 113 Fed. 634, p. 636.

A town-site claimant is charged with notice of the record of a mineral claim recorded in the proper record.

Goldstein v. Juneau Townsite, 23 L. D. 417, p. 419.

7. TITLE SUBJECT TO MINERAL RIGHTS AND USES.

Where mineral veins are possessed and the possession is recognized by local authority the title to town lots is acquired subject to such recognized possession and the necessary use thereof.

Deffeback v. Hawke, 115 U. S. 392, p. 403.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

The title to town lots is subject to the possession of any mineral vein where such possession is recognized by local authority, and no title can be acquired by an owner of a town lot to any mine of gold, silver, cinnabar or copper, or to any valid mining claim held under existing laws.

Larned v. Jenkins, 113 Fed. 634, p. 635.

The title to town lots is subject to the recognized possession and use of existing mining locations.

Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.

The title to town lots acquired under town-site locations is subject to the recognized possession and necessary uses of mineral veins or mining claims in possession of locators.

Pacific Slope Lode v. Butte Townsite, 25 L. D. 518, p. 521.
Overruling as to any conflict Pacific Slope Lode, In re, 12 L. D. 686, and Cameron Lode, In re, 13 L. D. 369.

The title to a town lot as a part of a town site located upon mineral lands in accordance with this section is subordinate to the rights of the locator of a mining claim under 2322 R. S., and where the mineral claimant desires to use the ground for the purpose of sinking a shaft, or for the erection of buildings required in carrying on his mining enterprise, or for reduction works, or for a mill site, in any such case his rights are superior to that of the town lot claimant and the quasi title of the lot owner must give way to the title of the mineral claimant, but these relative rights depend on priority of location and the recognized right of a town lot owner is not to be destroyed or affected by the subsequent discovery of mineral.

Rico Townsite, In re, 1 L. D. 556, p. 558.
Vizina Consol. Min. Co., In re, 9 C. L. O. 92.
Papina v. Anderson, 10 C. L. O. 52, p. 53.

This section does not limit the title of the locator of a mining claim under section 2319 R. S., to the necessary use of the ground located for mining purposes only.

Talbott v. King, 6 Mont. 76, p. 99.

A miner is entitled to a grant of the entire surface ground along the whole line of the lode claimed by him with a width of 100 feet without regard to the acquired surface rights of others, and the mining laws in this respect must be harmonized with the town-site laws.

Townsite of Central City, In re, 2 C. L. O. 150.
See Becker v. Central City, 2 C. L. O. 98.

E. TOWN-SITE OWNER.

1. RIGHTS AS AGAINST MINERAL CLAIMANT.
2. RIGHTS AS AGAINST THE UNITED STATES.

1. RIGHTS AS AGAINST MINERAL CLAIMANT.

A possessory right to town site property is sufficient to prevent the location of a mining claim thereon by a third person.

Bonner v. Meikle, 82 Fed. 697, p. 699.

Where persons locate upon and improve town-site lots in good faith and under the belief that the land was not mineral their rights should not be disturbed by the locator of a mining claim without clear and satisfactory proof that within the limits of such mining location there had been found a vein or lode which, in its natural course or direction, would give the locator a right to all the surface ground within the limits of his location.

Bonner v. Meikle, 82 Fed. 697, p. 704.

The relative rights of occupants of town sites and mineral claimants must depend on priority of occupation, but the rights of such occupants are recognized by the customs and usages of the country as well as by the statute.

Hickey, In re, 3 L. D. 85.
See Rico Townsite, In re, 1 L. D. 556.

The occupation of mineral lands for the purpose of a town lot is of no effect as against a valid mining claim and no rights or equities flow therefrom.

Talbott v. King, 6 Mont. 76, p. 101.
King v. Thomas, 6 Mont. 409, p. 411.
Chambers v. Jones, 17 Mont. 156, p. 162.
See Murray v. Buol, 6 Mont. 397.

Because of the fact that all valuable mineral deposits in lands belonging to the United States, whether surveyed or unsurveyed, are free and open to exploration and purchase, and the lands on which they are found to occupation and purchase, the fee is indivisible, and either the mining claimant or the town-site occupant is entitled to it to the exclusion of the other.

Townsite Clause, In re, 5 L. D. 256.
See Deffeback v. Hawke, 115 U. S. 392.

A party claiming a possessory title and priority of actual possession of a town site lot can not maintain ejectment against a patentee or his grantee of the same lot as a mining claim.

Steel v. Smelting Co., 106 U. S. 447, p. 454.
Silver Bow Min., etc., Co. v. Clark, 3 Mont. 378.
Talbott v. King, 6 Mont. 76.
Murray v. Buol, 6 Mont. 397.

There is no conflict between the rights flowing from a mining location and from a town-site patent, as the titles are entirely separate and distinct.

Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 240.

2. RIGHTS AS AGAINST THE UNITED STATES.

This section provides that nothing therein shall be construed to recognize any color of title in possession for mining purposes as against the United States.

Deffeback v. Hawke, 115 U. S. 392, p. 403.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

Mere possessory occupants of town lots on the public domain have no vested rights as against the United States.

Sparks v. Pierce, 115 U. S. 408, p. 413.
Bonner v. Meikle, 82 Fed. 697, p. 700.

F. PATENT FOR MINERAL LANDS.

1. APPLICATION BY MINERAL CLAIMANT—PROOF.
2. ADVERSE CLAIM.
3. CONCLUSIVENESS AS AGAINST TOWN-SITE CLAIMANT.
4. APPLICATION BY MINERAL CLAIMANT AFTER TOWN-SITE PATENT.

1. APPLICATION BY MINERAL CLAIMANT—PROOF.

An applicant for a mineral patent to lands embraced in a town site must show that the lands were known to be mineral prior to entry and issuance of the town-site patent.

Laney, In re, 9 L. D. 83, p. 84.

Where an application is made for a patent for a mineral claim partly covered by a prior town-site location and patent the mineral claimant will be limited to the land not in conflict.

Laney, In re, 9 L. D. 83.

A person seeking to obtain a patent for a mining claim on a town site in the possession of another must show he has a better right to the land than the one in possession.

Bonner v. Meikle, 82 Fed. 697, p. 700.
See Cook v. Johnson, 3 Alaska 506, p. 532.

2. ADVERSE CLAIM.

This statute permits anyone to file an adverse claim whenever application for a patent is made for a mining claim located upon the public lands, and requires him to begin proceedings in a competent court to determine the controversy.

Larned v. Jenkins, 113 Fed. 634, p. 638.

An action of ejectment based upon a patent issued prior to the initiation by the defendant of a mining claim for which he has applied for a patent is not inconsistent with a claim he had adverse to that application, under this section, and such adverse claim does not estop the party from maintaining his action.

Larned v. Jenkins, 113 Fed. 634, p. 639.

A town-site patentee should file an adverse claim against a mineral application, otherwise a suit to set aside the mineral patent will not be advised.

Smoke House Lode, In re, 4 L. D. 555.

3. CONCLUSIVENESS AS AGAINST TOWN-SITE CLAIMANT.

The title under a patent for a placer mining claim must prevail as against any subsequent claim of a town-site lot owner, where it is not shown that a valid entry of the alleged town site had ever been made.

Sparks v. Pierce, 115 U. S. 408, p. 412.
Distinguishing Deffeback v. Hawke, 115 U. S. 392.

4. APPLICATION BY MINERAL CLAIMANT AFTER TOWN-SITE PATENT.

An entry should not be allowed for any lode or vein within the exterior limits of a patented placer claim in the absence of a determination to which the owner of the placer claim was a party, that such lode was known to exist at the time of the filing of the placer application, and the same rule applies with reference to a lode claim existing within the limits of a patented town site.

Mill Side Lode, In re, 39 L. D. 356, p. 358.
See Iron Silver Min. Co. v. Campbell, 135 U. S. 286.

A title based upon a patent presumptively complete and issued on town-site or placer entries, and where the patent has remained for many years unchallenged, should not be disturbed except upon the clearest proof that the conflicting area was known at the date of the patent to contain valuable mineral deposits.

Mill Side Lode, In re, 39 L. D. 356, p. 358.

G. TOWN-SITE PATENT.

1. APPLICATION—SHOWING AS TO NONMINERAL CHARACTER OF LAND.
2. EFFECT AS AGAINST MINING RIGHTS.
3. PRESUMPTION AS AGAINST SUBSEQUENT MINERAL PATENT.
4. MINERAL LANDS EXCEPTED—KNOWN CHARACTER.
5. RESERVATIONS INSERTED AS TO MINERAL RIGHTS.
6. PURCHASER FROM TOWN AUTHORITIES—TITLE.
7. EFFECT ON JURISDICTION OF LAND DEPARTMENT.
8. SUBSEQUENT DISCOVERY OF MINERAL.

1. APPLICATION—SHOWING AS TO NONMINERAL CHARACTER OF LAND.

In order to secure a patent for a town-site claim the applicant must make an affidavit that there is no known lode or vein within the boundary of the town-site entry, and if a patent issues on a false statement the entry could be vacated or annulled by an appropriate action in the proper court.

Pacific Slope Lode, In re, 12 L. D. 686, p. 688.

Though a patent to a town site is issued on an affidavit that proves to be false as to the existence of a lode or vein, yet the department is not authorized to issue a patent for such lode or vein until the town-site patent is set aside or modified.

Pacific Slope Lode, In re, 12 L. D. 686, p. 689.
See Pike's Peak Lode, In re, 10 L. D. 200.

2. EFFECT AS AGAINST MINING RIGHTS.

Lands covered by a town-site patent are not subject to mineral entry.

Protector Lode, In re, 12 L. D. 662, p. 663.
See Pike's Peak Lode, In re, 10 L. D. 200.

A town-site patent, when issued, will not operate to convey title to any lands known to be valuable for minerals at the date of the town-site entry, and it will not affect any rights, present or prospective, possessory or otherwise, which locators may acquire under the provisions of the mining laws, and they may subsequently apply for and receive patent under the mining laws to any or all lands claimed by them within the town site which they can show were known to be valuable for minerals at the date of the entry, as if the town-site patent had not been issued, as the law preserves to them all rights acquired under the mining laws prior to such town-site entry.

Lalande v. Town Site of Saltese, 32 L. D. 211, p. 216.

Under this and section 2392 a town-site patent carries absolute fee-simple title to the patentee of all land in which no gold, silver, copper, or cinnabar mine existed, or in which any valid mining claim or possession was had or held under local authority or rules or existing laws.

Dower v. Richards, 73 Cal. 477, p. 479.

A patent to a town-site lot or strip of ground is prior and superior to a conveyance made by a prior locator of a mining claim under the statute of 1866, where such locator subsequently marked his boundaries on the surface and procured a patent for the same as marked, and which did not include the lot or strip of ground in controversy, though it was subsequently discovered that the vein or lode apexing in such location extended on its strike into this lot or strip of ground.

Larned v. Jenkins, 113 Fed. 634, p. 639.

3. PRESUMPTION AS AGAINST SUBSEQUENT MINERAL PATENT.

Where a town-site patent is regularly issued the presumption must be indulged, as against a subsequent mineral patent, that the land at the time of the issuance of the town-site patent did not contain any known mines and was not valuable for mineral; and in a contest between the town-site patentee and the subsequent mineral patentee the former may prove that the land was not known to be valuable for minerals at the date of the issuance of the patent, to rebut any presumption arising solely from the fact of issue of the mineral patent.

Davis v. Weibbold, 139 U. S. 507, p. 518.
Dower v. Richards, 151 U. S. 658, p. 663.
Richards v. Dower, 81 Cal. 44.
Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 332.
Casey v. Thieviege, 19 Mont. 341, p. 353.

4. MINERAL LANDS EXCEPTED—KNOWN CHARACTER.

The provision of this section does not constitute a reservation of minerals to the United States, but it only imports that the provisions by which town sites are transferred shall not be the means of passing title to the minerals named, or to valid mining claims existing thereon.

Davis v. Weibbold, 139 U. S. 507, p. 518.
Golden v. Murphy, 31 Nev. 395, p. 418.

In order to except mines or mineral lands from the operation of a town-site patent it is not sufficient that the lands do in fact contain valuable minerals, but they must be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them.

Deffeback v. Hawke, 115 U. S. 392, p. 404.
Davis v. Weibbold, 139 U. S. 507, p. 518.
Dower v. Richards, 151 U. S. 658, p. 663.
Montana Central R. Co. v. Migeon, 68 Fed. 811, p. 815.
Migeon v. Montana Central R. Co., 77 Fed. 249, p. 256.
United States v. Central Pac. R. Co., 84 Fed. 218, p. 220.
United States v. Central Pac. R. Co., 93 Fed. 871, p. 873.
Cripple Creek Gold Min. Co. v. Mt. Rosa Min., etc., Co., 26 L. D. 622, p. 626.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.
Mill Side Lode, In re, 39 L. D. 356, p. 358.
Brownfield v. Bier, 15 Mont. 403, p. 414.
Horsky v. Moran, 21 Mont. 345, p. 363.
Distinguishing Golden v. Murphy, 31 Nev. 395, p. 408.

Ground embraced in a mineral entry and known to be valuable mineral land at the date of a town-site entry is excepted from a town-site patent.

Brady v. Harris, 29 L. D. 89, p. 92.
See Brady v. Harris, 29 L. D. 426, p. 433.

To except from a town-site patent definite surveys of mineral claims initiated or extended after surface occupation by other parties would be to ignore adverse rights which have not been presented for adjustment by the courts prior to the mineral entry.

Townsite of Central City, In re, 2 C. L. O. 150.
Townsite of Eureka Springs v. Conant, 8 C. L. O. 3.

A town-site patent is inoperative as to all lands known at the time of the entry to be valuable for mineral or discovered to be of such character prior to the occupation or improvement of the land under the town-site law.

Antediluvian Lode & Mill Site, In re, 8 L. D. 602, p. 604.
Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 253.
See Simmons, In re, 7 L. D. 283.
Moyle v. Bullene, 7 Colo. App. 308.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378.

This section does not permit a town-site entry upon known mineral lands.

Hawke v. Deffeback, 4 Dak. 20, p. 29.

Under a town-site entry no title can be acquired by a town to any valid mining claim or possession held under existing laws.

Telluride Additional Townsite, In re, 33 L. D. 542, p. 543.
Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 102, p. 104.

A hearing may be ordered to determine whether lands included in a town-site entry are mineral.

Coleman, In re, 15 C. L. O. 255.

5. RESERVATIONS INSERTED AS TO MINERAL RIGHTS.

On the theory that there may be a division of the fee simple in the surface and the minerals underneath the surface, the clause "excepting and excluding, however, from these presents all town property rights upon the surface, and there are hereby expressly excepted and excluded from the same all houses, buildings, structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above-described premises, not belonging to the grantee herein, and all rights necessary or proper to the occupation, possession, and enjoyment of the same," has been inserted in patents for lode claims, but the insertion of such a clause is not authorized by law, and such a reservation could not affect the title thereby conveyed.

Townsite Clause, In re, 5 L. D. 256.
Turner v. Lang, 1 C. L. O. 51.
Townsite of Central City, In re, 2 C. L. O. 150.
See Deffeback v. Hawke, 115 U. S. 392, p. 403.

Patent for town sites in mining regions should contain a proviso to the effect that no title is thereby acquired to any mine of gold, silver, cinnabar, lead, tin, copper, or to any valid mining claim or possessions held under existing laws, and the grant made is subject to all the conditions, limitations, and restrictions in the section of the statute.

Townsite of Central City, In re, 2 C. L. O. 150.
Townsite of Butte, In re, 3 C. L. O. 131.
Townsite of Coalville, 4 C. L. O. 46, p. 47.
Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152.

Patents for mining claims within the exterior limits of a town should contain a clause excepting and excluding therefrom all town property rights upon the surface as well as all the houses, buildings, and structures, lots, streets, alleys, or other municipal improvements on the surface of the premises, with all rights necessary or proper to the occupation, possession, and enjoyment of the same.

Townsite of Central City, In re, 2 C. L. O. 150.
See Vizina Consol. Min. Co., In re, 8 C. L. O. 172.

It is the custom of the department to insert in town-site patents a clause reserving all the mineral and mineral rights either to the Government or to the legal occupant thereof, but if the reservation is broader than the statute warrants it is a nullity as to any excess over the statutory restriction, and any reservation not authorized by law is a nullity.

Rico Townsite, In re, 1 L. D. 556.
Vizina Consol. Min. Co., In re, 9 C. L. O., p. 92.

Where a town settlement has been made upon a mineral claim, a reservation clause should properly go into the patent, though such settlement was not protected by a town-site entry, and the actual rights of the claimants under the mineral location and the town-site settlement would depend upon priority of occupation, but the question of such occupation must be left to the courts to determine.

Hickey, In re, 3 L. D. 85.

Reservation in town-site patents in favor of mineral claimants not authorized by law are unavailing.

Townsite of Eureka Springs v. Conant, 8 C. L. O. 3, p. 4.

6. PURCHASER FROM TOWN AUTHORITIES—TITLE.

Patents for town sites excepting therefrom existing mines and mining possessions are held subject to any valid mining claim or possession, and a purchaser of a lot from town-site authorities holds it subject to the same conditions.

Townsite of Butte, In re, 3 C. L. O. 131, p. 132.

The deed of city authorities authorized to convey lots in a town site is presumptively valid, and is not subject to collateral attack.

Larned v. Jenkins, 113 Fed. 634, p. 638.
See Smith v. Pipe, 3 Colo. 187, p. 199.
Anderson v. Bartels, 7 Colo. 256, pp. 263, 266.
Chever v. Horner, 11 Colo. 68, pp. 71, 79.

7. EFFECT ON JURISDICTION OF LAND DEPARTMENT.

The issuance of a patent to a town-site company deprives the Land Department of all further jurisdiction over the land embraced therein so long as the patent remains outstanding.

Plymouth Lode, In re, 12 L. D. 513, p. 514.
See United States v. Schurz, 102 U. S. 378.

8. SUBSEQUENT DISCOVERY OF MINERAL.

The subsequent discovery of minerals in lands entered and patented as town-site entries can not affect the validity of the patent.

Davis v. Weibbold, 139 U. S. 507, p. 518.
See Horsky v. Moran, 21 Mont. 345, p. 363.
Chambers v. Jones, 17 Mont. 156, p. 162.

The title to land of persons claiming under a town-site patent where it was not known that such lands contain valuable minerals at the time the patent was issued is not impaired by a subsequent discovery of valuable minerals in such lands.

Davis v. Weibbold, 139 U. S. 507, p. 518.
Dower v. Richards, 151 U. S. 658, p. 663.
Migeon v. Montana Central R. Co., 77 Fed. 249, p. 256.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.
See Deffeback v. Hawke, 115 U. S. 392.

A change in the conditions occurring subsequently to a sale, by means whereof it may become profitable to work the veins as mines, can not affect the title to land

as it passed at the time of the sale, but the question as to its mineral character must be determined according to the facts existing at the time of the sale.

Laney, In re, 9 L. D. 83, p. 84.
See Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

SECTION 2387, REVISED STATUTES.

Whenever any portion of the public lands have been or may be settled upon and occupied as a town site, not subject to entry under the agricultural preemption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sale, thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

A. TOWN-SITE ACT—PURPOSE.
B. TOWN-SITE ENTRY.

A. TOWN-SITE ACT—PURPOSE.

The town-site act opens to entry for town-site purposes any portions of the public land settled upon and occupied as a town site, not subject to entry under the agricultural or preemption laws, but lands valuable for minerals are expressly excepted from all town-site sections.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

B. TOWN-SITE ENTRY.

1. EFFECT OF ENTRY ON MINING CLAIM.
2. ADVERSE CLAIM.
3. DOES NOT CARRY MINING CLAIMS.

1. EFFECT OF ENTRY ON MINING CLAIM.

A town-site entry can not affect a valid existing mining claim situated within the boundaries of the town site, as in such case the mining ground has been previously granted and has ceased to be a portion of the public lands, for which only a town-site entry can be made.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 416.

2. ADVERSE CLAIM.

A town-site entry and patent can only embrace land not known to be mineral at the time of entry and therefore a town-site patentee has no standing as an adverse claimant against an application for patent by a mineral claimant, as this question must be decided by the Land Department, and a decision by a court on that question would not be binding or relieve the department from the duty of making its own decision.

Ryan v. Granite Hill Min., etc., Co., 29 L. D. 522, p. 524.
Wright v. Town of Hartville, 13 Wyo. 497, p. 507.

3. DOES NOT CARRY MINING CLAIMS.

A town-site entry and patent does not carry title to any mine of gold, silver, or copper, or to any valid mining claim or possession held under existing law.

Callahan v. James, 141 Cal. 291, p. 293.

The fact that land was known at the date of a town-site entry to contain some mineral would not alone warrant a conclusion that it was excepted from the town-site patent.

Mill Side Lode, In re, 39 L. D. 356, p. 358.

SECTION 2333, REVISED STATUTES.

No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws.

See 14 Stat. 541, p. 541, p. 1376; 15 Stat. 67, p. 1377.

A. TOWN-SITE LAWS.
B. TOWN-SITE PATENT, p. 1371.
C. MINERAL PATENT, p. 1374.

A. TOWN-SITE LAWS.

1. CONSTRUCTION AND PURPOSE.
2. "MINES OF GOLD"—"LANDS VALUABLE FOR MINERALS"—MEANING.
3. TOWN SITES LOCATED ON MINERAL LANDS—EFFECT.
4. EXISTING MINING RIGHTS PROTECTED.
5. TITLE TO MINERAL LANDS NOT ACQUIRED UNDER.
6. EXTENT OF PROHIBITION AGAINST TITLE TO MINES.
7. MINERAL CHARACTER OF LAND—DETERMINATION AND JURISDICTION.
8. MINERALS IN TOWN-SITE LANDS OPEN TO EXPLORATION.

1. CONSTRUCTION AND PURPOSE.

Congress, by these statutes relating to town sites, recognized the possession of mining claims within their limits.

Deffeback v. Hawke, 115 U. S. 392, p. 402.

This section has no relation to a patent for a town site issued July 1, 1869.

Richards v. Dower, 81 Cal. 44, p. 49.

This section does not evince a legislative intent to permit town-site entries upon mineral lands.

Hawke v. Deffeback, 4 Dak. 20, p. 32.

It is proper for the Government to reserve to itself the title to any gold mine which may be known to exist in any part of a town-site lot.

Dower v. Richards, 73 Cal. 477, p. 478.

2. "MINES OF GOLD"—"LANDS VALUABLE FOR MINERALS"—MEANING.

The term "mines of gold, silver, cinnibar, or copper," used in connection with town-site lands, refers only to known mines discovered prior to the issuance of the town-site patent.

Williams, In re, 9 C. L. O. 147.

The term "mine of gold, silver, cinnabar, or copper," as used in the exception found in this section, means a paying mine known to exist at the time of the grant, or one which there was good reason to believe then existed.

Smith v. Hill, 89 Cal. 122, p. 125.

The words "mines of gold," used in this section, and the term "lands valuable for minerals" in section 2318 R. S., and the words "valuable mineral deposits" in section 2319, and the word "mine" in section 2323 R. S., all refer to substantially the same thing and embrace both veins or lodes and placers.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

A town-site entry can not be made on lands known to contain minerals of such extent and value as to justify expenditure for the purpose of extracting them.

Callahan v. James, 141 Cal. 291.
See Smith v. Hill, 89 Cal. 122.

3. TOWN SITES LOCATED ON MINERAL LANDS—EFFECT.

A town site may be located on mineral land.

Rico Townsite, In re, 1 L. D. 556, p. 558.
Townsite of Big Oak Flat, In re, 15 C. L. O. 3.
See Deffeback v. Hawke, 115 U. S. 392.

Town sites may be located on mineral land, but the town-site claimant will hold his claims subject to the rights of the mineral claimant.

Esler v. Townsite of Cooke, 4 L. D. 212, p. 214.
See Mining Co. v. Consolidated. Min. Co., 102 U. S. 167, p. 168.
Steel v. Smelting Co., 106 U. S. 447.
Rico Townsite, In re, 1 L. D. 556, p. 557.
Smith, In re, 7 L. D. 415.
Townsite of Butte, In re, 3 C. L. O. 131.
Vizina Consol. Min. Co., In re, 9 C. L. O. 92.
Papina v. Alderson, 10 C. L. O. 52.

4. EXISTING MINING RIGHTS PROTECTED.

Congress intended by this section to preserve existing rights to known mines of gold, silver, cinnabar, or copper, and to known mining claims and possessions as against any assertion of title thereto by virtue of conveyances received under the town-site act and not to leave the title of purchasers on town sites to be disturbed by future discoveries.

Davis v. Weibbold, 139 U. S. 507, p. 525.
Cowell v. Lammers, 21 Fed. 200.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 602.
Plymouth Lode, In re, 12 L. D. 513, p. 515.
Smith v. Hill, 89 Cal. 122, p. 126.
Loney v. Scott, 57 Oreg. 378, p. 383.

The provisions of this section prohibiting the acquisition of title to mines in town sites are to be read in connection with the clause protecting existing rights to mineral veins and with the qualification accompanying exceptions in acts of Congress of mineral lands from grant or sale.

Davis v. Weibbold, 139 U. S. 507, p. 518.

The proviso of this section was inserted in pursuance of the usual policy of reservation and exception of lands valuable for minerals and to prevent the acquisition of title to such lands under the provisions of the town-site act.

Hawke v. Deffeback, 4 Dak. 20, p. 33.

5. TITLE TO MINERAL LANDS NOT ACQUIRED UNDER.

See Sec. 2386, p. 1354.

Under this and the succeeding sections no title from the United States to land known at the time of the sale to be valuable for its mines of gold, silver, cinnabar, or copper can be obtained under the preemption or homestead laws or the town-site laws, or in any other way than as prescribed by law, except in the States of Michigan, Wisconsin, Minnesota, Missouri, and Kansas.

Deffeback v. Hawke, 115 U. S. 392, p. 404.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307, p. 309.
Davis v. Weibbold, 139 U. S. 507, p. 517.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, pp. 603, 614, 616.
Spong, In re, 5 L. D. 193.
Pike's Peak Lode, In re, 10 L. D. 200.
Pacific Slope Lode, In re, 12 L. D. 686.
Cameron Lode, In re, 13 L. D. 369.
Duffy Quartz Mine, In re, 18 L. D. 259, p. 260.
Pacific Slope Lode v. Butte Townsite, 25 L. D. 518, p. 521.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.
South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.
Rico Townsite, In re, 1 L. D. 556.
Largey, In re, 17 C. L. O. 3, p. 4.
Kansas City Min., etc., Co. v. Clay, 3 Ariz. 326, p. 330.
Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 416.
Talbott v. King, 6 Mont. 76, p. 99.
Golden v. Murphy, 31 Nev. 395, p. 408.
United States v. San Pedro, etc., Co., 4 N. Mex. 225, p. 294.
See Laney, In re, 9 L. D. 83.

The title to known valuable mineral land can not be acquired under the town-site laws, but this does not militate against the validity of an entry so far as it affects property other than mineral lands.

Deffeback v. Hawke, 115 U. S. 392, p. 406.
Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 577.
Smoke House Lode, In re, 4 L. D. 555, p. 556.
Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.
Reilly v. Berry, 2 Ariz. 272, p. 274.
Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 253.

While town-site laws permit occupation and entry of lands in mineral regions, they expressly provide that no title shall be acquired thereunder to the precious metals.

Townsite of Eureka Springs v. Conant, 8. C. L. O. 3, p. 4.

Lands valuable for placer mining claims are not subject to entry for town-site purposes.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 155.
Townsite of Leadville, In re, 9 C. L. O. 71.
See Van Ocker, In re, 9 C. L. O. 71.

No title can be acquired under these statutes to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws in town sites, and the title to the surface of such town sites as were not occupied by any person was in the United States to be held in trust for the inhabitants of the town or city, and the town sites were not thereafter subject to location as placer mining claims.

Ritter v. Lynch, 123 Fed. 930, p. 931.

6. EXTENT OF PROHIBITION AGAINST TITLE TO MINES.

The provisions of this section merely prohibit the passage of title under the provisions of the town-site laws to mines of gold, silver, cinnabar, or copper, which are known to exist at the time of the issue of the town-site patent, and to mining claims

and mining possessions where proceedings have been taken under the laws and customs of miners rendering them valid and creating property rights in the holder, and not to prohibit the acquisition for all time of mines which then lay buried in the depths of the earth.

Davis v. Weibbold, 139 U. S. 507, p. 518.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 600.
Kansas City Copper Min., etc., Co. v. Clay, 3 Ariz. 326, p. 332.
Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 253.
See Olive Land & Dev. Co. v. Olmstead, 103 Fed. 568, p. 577.

7. MINERAL CHARACTER OF LAND—DETERMINATION AND JURISDICTION.

The provision that no title shall be acquired in town sites to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws, imports only that the provisions by which the title to lands in such town sites are transferred shall not be the means of passing the title to mines of gold, silver, cinnabar, or copper in the land, or to valid mining claims or possessions thereon.

Davis v. Weibbold, 139 U. S. 507, p. 518.

A known lode claim based on a recorded location embraced in a town-site patent providing that no title shall be acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession, terminates the jurisdiction of the department over the ground embraced in the lode claim.

Pacific Slope Lode, In re, 12 L. D. 686, p. 688.
Pike's Peak Lode, In re, 14 L. D. 47, p. 49.

The question of whether or not lands located under any of the provisions of the land laws are mineral lands is to be determined by the Land Department, to which the administration of land laws has been committed.

Board of Education v. Mansfield, 17 S. Dak. 72, p. 78.

8. MINERALS IN TOWN-SITE LANDS OPEN TO EXPLORATION.

When mines are found in public lands belonging to the United States, whether within or without town sites, they may be claimed and worked, provided they do not interfere with existing rights of others gained by prior occupation.

Steel v. Smelting Co., 106 U. S. 447, p. 450.

Unoccupied public land embraced within a town site is not exempt from location and sale for mining purposes, but its exemption is only from settlement and sale under the preemption laws.

Steel v. Smelting Co., 106 U. S. 447, p. 449.
Deffeback v. Hawke, 115 U. S. 392, p. 406.
See Rankin, In re, 7 L. D. 411.

When mines are found in the public lands, whether within or without town sites, they may be claimed and worked where the existing rights of others from a prior occupation are not interfered with.

Davis v. Weibbold, 139 U. S. 525; 11 Sup. Ct. 635.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 605.

Mines of precious metals found in lands belonging to the United States, whether within or without town sites, may be claimed and worked if not otherwise occupied.

Poire v. Wells, 6 Colo. 406, p. 411.

B. TOWN-SITE PATENT.

1. EFFECT AS A CONVEYANCE.
2. MINERALS RESERVED—MEANING AND PROOF.
3. MINERAL LANDS EXEMPTED—PROOF OF VALUE.
4. KNOWN LODE CLAIM INCLUDED—REMEDY.
5. EFFECT AS AGAINST MINERAL CLAIMANTS.
6. RELIEF AGAINST PRIOR MINERAL ENTRY.
7. GROUND ABANDONED BY MINERAL CLAIMANT—PRESUMPTION.
8. MILL SITE EXCEPTED.
9. SUBSEQUENT DISCOVERY OF MINERAL.

1. EFFECT AS A CONVEYANCE.

A patent of a town site is a quitclaim deed from the United States, and when properly recorded is notice to the world of all it contains.

McCarthy, In re, 14 L. D. 105, p. 108.

2. MINERALS RESERVED—MEANING AND PROOF.

This statute reserves from patents for town-site lands only mines of gold, silver, cinnabar, or copper which are known to exist at the time of the issue of the patent and mining claims and possessions then lawfully existing.

Larned v. Jenkins, 113 Fed. 634, p. 637.
See Davis v. Weibbold, 139 U. S. 507, pp. 518, 526, 527.
Dower v. Richards, 151 U. S. 658, p. 663.
Smith v. Hill, 89 Cal. 122.

A patent issued to the town-site of Butte in accordance with the law declaring that no title shall be acquired under the town-site laws to any mine of gold, silver, cinnabar, or copper, expressly excluded such veins or lodes from the operation of the conveyance.

Pacific Slope Lode, In re, 12 L. D. 686, p. 688.

The patent to town-site land will convey no title to a known mine, a mining claim, or the possession of a lode in the land patented.

Cameron Lode, In re, 13 L. D. 369, p. 370.

In order to exempt mining or mineral lands from the operation of a town-site patent it is not sufficient that the lands do in fact contain minerals when the town-site patent takes effect, but it is necessary that they be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting such minerals, but subsequent discovery does not defeat or impair the title.

Harkrader v. Goldstein, 31 L. D. 87, p. 95.
See Deffeback v. Hawke, 115 U. S. 392.

The title to mines of gold, silver, cinnabar, or copper, and all mining claims or possessions under existing laws, is not affected by a town-site patent.

Townsite of Butte, In re, 3 C. L. O. 131.
See Townsite of Central City, In re, 2 C. L. O. 150.

This section expressly forbids the acquisition of title to any mine, mining claim, or possession by virtue of such occupation, and a town-site patent issued in pursuance thereof necessarily exempts any such mine or mining claim.

Talbott v. King, 6 Mont. 76, p. 101.

Mining ground is expressly excluded from the force and effect of a town-site patent by the language of the patent itself and also by this section of the statute.

King v. Thomas, 6 Mont. 409, p. 414.

Under this and section 2386 R. S., patents for town sites except from the conveyance all mining rights, and patents for vein or lode claims within town-site limits except all town property rights upon the surface.

Hawke v. Deffeback, 4 Dak. 20, p. 28.

3. MINERAL LANDS EXEMPTED—PROOF OF VALUE.

In case of a contest between a mineral claimant and a person holding a town-site patent, in order to except mineral lands from such a patent such lands must be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting such mineral, and the fact that they had once been valuable, or had subsequently been discovered to be so valuable, does not impair the town-site patent.

Deffeback v. Hawke, 115 U. S. 392, p. 404.
Davis v. Weibbold, 139 U. S. 507, p. 525.
Dower v. Richards, 151 U. S. 658, p. 663.
Bonner v. Meikle, 82 Fed. 697, p. 704.
Lalande v. Townsite of Saltese, 32 L. D. 211, pp. 213, 214, 215.
Madison v. Octave Oil Co., 154 Cal. 768, p. 772.

If there are no actual known mines capable of being profitably worked so as to make the land more valuable for mining than for agriculture a patent under the preemption act can not be set aside.

Plymouth Lode, In re, 12 L. D. 513, p. 515.
See Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

The effect of a reservation in a town-site patent in the language of the statute is to exclude from the grant all valid mining claims properly located and held prior to the entry of the town site as well as all mines of gold, silver, cinnabar, or copper.

Williams, In re, 9 C. L. O. 147.

4. KNOWN LODE CLAIM INCLUDED—REMEDY.

Where it appears that a town-site patent has issued for lands embracing a known lode claim duly recorded prior to the town-site entry, judicial proceedings should be instituted for the vacation of the patent so far as it conflicts with the mining claim, and a patent should then issue to the mineral claimant and under such circumstances the department may order a hearing to ascertain whether the grounds embraced in the mineral claim were known to be valuable for minerals at the date of or prior to the town-site entry.

Cameron Lode, In re, 13 L. D. 369, p. 371.
See Plymouth Lode, In re, 12 L. D. 513.

A town-site patent conveys no title to any mine of gold, silver, cinnabar, copper, or any valid mining claim or possession held under existing laws.

Townsite of Coalville, In re, 4 C. L. O. 46, p. 47.

A town-site patent can not convey to the patentee any surface ground of an existing valid mining location within the town-site limits.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 418.
See Talbott v. King, 6 Mont. 76, p. 98.

5. EFFECT AS AGAINST MINERAL CLAIMANTS.

Town-site lots must be taken burdened with the rights of the mineral claimants and the necessary use thereof, and the quasi title of the lot owner must give way to the title of the mineral claimant for the purpose of mining.

Rico Townsite, In re, 1 L. D. 556, pp. 558, 559.

No rights possessed by a protestant will be lost or prejudiced by the issuance of a town-site patent subject to the limitations of this section for the full area claimed in the declaratory statement.

Lalande v. Townsite of Saltese, 32 L. D. 211, p. 212.

When title is acquired to a town-site lot, no right remains to proceed for patent for mining ground under the reservations of law except for mines with the incidents of such surface ground as are actually necessary for operations, and for such mine and possessory rights, together with surface ground not in excess of that recognized by law at the date of the location, as were acquired by the locator before the legal inception of the town-site title.

Papina v. Alderson, 10 C. L. O. 52, p. 53.

The locator of a placer mining claim having only a placer mining right and to the extent that his interest is interfered with he can maintain a suit to remove a cloud therefrom or to quiet a title to such limited interest, but he can not maintain an action to cancel a patent issued for a town site.

Carter v. Thompson, 65 Fed. 329, p. 331.
Board of Education v. Mansfield, 17 S. Dak. 72, p. 79.

A lode claimant will not be permitted to prove that the lode claimed by him was known to exist prior to the issuance of the town-site patent where it is not shown that the lands covered by the town site were known to be mineral prior to the town-site entry and patent.

Laney, In re, 9 L. D. 83, p. 84.

6. RELIEF AGAINST PRIOR MINERAL ENTRY.

The patentee of a town-site lot on land containing a prior mineral entry may be given an opportunity to reconvey to the Government the tract included in such mineral entry and thus give the department jurisdiction to pass upon conflicting claims, but the conveyance must be absolute and accompanied by proof that the land had not been previously conveyed, thus saving the expense and delay of litigation.

Pederson Lode v. Black Hawk Townsite, 14 L. D. 186.
See Juniata Lode, In re, 13 L. D. 715.

Upon proof showing that a town-site entry or patent includes a mine of valuable ore, known to be such at the date of the town-site entry and patent, the department may order a hearing with a view to subsequent judicial proceedings.

Plymouth Lode, In re, 12 L. D. 513, p. 514.
Pacific Slope Lode, In re, 12 L. D. 686, p. 687.
Cameron Lode, In re, 13 L. D. 369, p. 370.

7. GROUND ABANDONED BY MINERAL CLAIMANT—PRESUMPTION.

The fact that the locator of a mining claim under the act of 1866 has marked his location boundaries and taken a patent for a part of his location would indicate that no mine was then known to exist upon the part thus abandoned by him, and a town-site patent for such abandoned part is valid.

Larned v. Jenkins, 113 Fed. 634, p. 637.

8. MILL SITE EXCEPTED.

Under the town-site laws no title can be acquired to a mill site located in connection with a mining claim.

Davis v. Weibbold, 139 U. S. 507, p. 517.
Cleary v. Skiffich, 28 Colo. 362, p. 369.
See Dughi v. Harkins, 2 L. D. 721.

A mill site properly entered and used in connection with an existing mining claim is by law excepted from a subsequent town-site entry and patent, by force of this section.

Hartman v. Smith, 7 Mont. 19, p. 29.

A patent for a town site, including a mill site, used in connection with an existing claim is void.

Hartman v. Smith, 7 Mont. 19, p. 30.

Local officers should not permit a town-site entry pending proceedings on the protest of a mill-site claimant.

Esler v. Townsite of Cooke, 4 L. D. 212, p. 215.

9. SUBSEQUENT DISCOVERY OF MINERAL.

If land is not known to be mineral in character and no mining locations have been made thereon, a town-site patent can not be invalidated by a subsequent discovery of mineral.

Duffy Quartz Mine, In re, 18 L. D. 259, p. 263.

The right of a town-lot owner is not to be destroyed by the subsequent discovery of a mineral vein, but the relative rights of the town-lot owner and mineral claimant depend on the priority of acquisition of title.

Rico Townsite, In re, 1 L. D. 556, p. 559.
See Townsite Clause, In re, 5 L. D. 256, p. 257.

Where a town-site claimant has acquired his rights in advance of the discovery of any mine and the initiation of proceedings for the acquisition of title, his rights will be deemed superior to those of the mining claimant, otherwise the title of the mineral claimant is superior.

Duffy Quartz Mine, In re, 18 L. D. 259, p. 263.
See Davis v. Weibbold, 139 U. S. 507, p. 526.

A change in the condition of lands subsequent to patent with reference to valuable mineral deposits can not affect the title as it passed at the time of the sale.

Plymouth Lode, In re, 12 L. D. 513, p. 514.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

C. MINERAL PATENT.

1. APPLICATION—OBJECTIONS—PRIORITY OF RIGHTS.
2. RESERVING TOWN-SITE RIGHTS.
3. PRIORITY OF LOCATION—RELATION—RESERVATION.
4. TOWN-SITE OWNER—NO COMPENSATION FOR IMPROVEMENTS.

1. APPLICATION—OBJECTIONS—PRIORITY OF RIGHTS.

An application for patent for a lode claim can not be objected to because there is an application for a town site which embraces the ground included in the lode claim application.

South Comstock Gold, etc., Min. Co., In re, 2 C. L. O. 146.

On application for patent for a mining claim within a town site where it is alleged that such town site included a mine containing valuable ore the existence of which was well known at the time the town-site patent was issued, the department may inquire into the truthfulness of the allegation with a view of recommending a suit to vacate so much of the town-site patent as describes the mineral claim.

Plymouth Lode, In re, 12 L. D. 513, p. 514.
See Bullock v. Central Pac. R. Co., 11 L. D. 590.
Colorado Coal & Iron Co. v. United States, 123 U. S. 307.

The existence of prior possessory rights of mineral lands, whether in town sites or otherwise, is a matter properly cognizable by the Land Department when application is made for a patent, unless Congress has referred it to local tribunals.

Steel v. Smelting Co., 106 U. S. 447, p. 450.

A locator in possession of an existing valid mining claim is not required to file an adverse claim to a subsequent entry of a town site.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378, p. 417.

2. RESERVING TOWN-SITE RIGHTS.

A clause reserving town-site rights should be inserted in a mineral patent where it appears that a portion of a town covers the mineral claim.

Hickey, In re, 3 L. D. 85.

In issuing patents for mining claims upon veins or lodes, where it appears that the surface ground lies within the limits of a previously located or patented town site, it is proper to insert a reservation of the surface rights, including buildings, structures, and improvements on the surface, thus giving to the mineral claimant all that the law contemplates to be granted by the patent in such cases.

Mandeville, In re, Copp's Min. Lands 308.

This section gives to town-site occupants surface rights subject to the rights of mineral claimants; and a patent for a mining claim may contain a reservation saving the rights of the town-site occupants.

Vizina Consol. Min. Co., In re, 8 C. L. O. 172.

3. PRIORITY OF LOCATION—RELATION—RESERVATIONS.

Mining claims legally located are prior to subsequent town-site entries and the patent when issued dates by relation to the time of the location.

Silver Bow Min., etc., Co. v. Clark, 5 Mont. 378.
Talbott v. King, 6 Mont. 76.
Murray v. Buol, In re, 6 Mont. 397.
See St. Paul & Pac. R. Co. v. Northern Pac. R. Co., 139 U. S. 1.
Northern Pac. R. Co. v. Barden, 46 Fed. 592, p. 608.

Where a mining claim existed and was possessed throughout its entire length prior to a town-site location, and the possessory right of the mineral claimant has since been continuously held and maintained in accordance with the mining laws, no reservation in behalf of town-site occupants should be made in the patent for such mining claim.

Mandeville, In re, Copp's Min. Lands 328, p. 330.
Vizina Consol. Min. Co., In re, 8 C. L. O. 172.

4. TOWN-SITE OWNER—NO COMPENSATION FOR IMPROVEMENTS.

Land within the limits of a town-site entry which was known to be valuable for mineral, and found to be mineral in character, leaves town-site settlers on such lands without legal or equitable rights, and they are not entitled to compensation for their improvements under local statutes.

Deffeback v. Hawke, 115 U. S. 392, p. 407.
Sparks v. Pierce, 115 U. S. 408, p. 413.
Hawke, In re, 5 L. D. 131.

5 STAT. 657, MAY 23, 1844.

ENTRY BY CORPORATE AUTHORITIES.

AN ACT For the relief of the citizens of towns upon the lands of the United States.

Be it enacted, etc., That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a

town site, and therefore not subject to entry under the existing preemption laws, it shall be lawful, in case such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judges of the county court for the county in which such town may be situated, to enter, at the proper land office, and at the minimum price, the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same in situated: Provided, That the entry of the land intended by this act be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of April 24, 1820, and shall not in the whole exceed 320 acres: And provided, also, That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of none effect: And provided, also, That the corporate authorities of the town of Weston, in the county of Platte, State of Missouri, or the county court of Platte county, in said State, shall be allowed 12 months, from and after the passage of this act to enter at the proper land office, the lands upon which said town is situate.

A. TOWN-SITE LAWS.

1. FORCE AND APPLICATION.
2. MINERAL LANDS NOT SUBJECT TO OCCUPATION.

1. FORCE AND APPLICATION.

This act is the original town-site act.

Murray v. Hobson, 10 Colo. 66, p. 72.

The general town-site statute was never in force in the State of Oregon.

Marlin v. T'Vault, 1 Oreg. 77, p. 84.

2. MINERAL LANDS NOT SUBJECT TO OCCUPATION.

See 10 Stat. 244, p. 1257.

This act and the act of March 3, 1853 (10 Stat. 244), made all public lands not mineral, occupied as town sites, subject to entry by the town authorities in trust for the several use and benefit of the occupants according to their respective entries, whether settled upon before or after such lands were surveyed.

Rector v. Gibbon, 111 U. S. 276, p. 287.

Public lands occupied as towns or villages are subject to this act, except town sites on or near mineral lands.

Keystone Consol. Min. Co., v. California, Copp's Min. Lands 101, p. 111.

14 STAT. 541, MARCH 2, 1867.

MINERALS RESERVED.

AN ACT For the relief of the inhabitants of cities and towns upon the public lands.

Be it enacted, etc., That whenever any portions of the public lands of the United States have been or shall be settled upon and

occupied as a town site, and therefore not subject to entry under the agricultural preemption laws, it shall be lawful, in case such town shall be incorporated, for the corporate authorities thereof, and if not incorporated, for the judge of the county court for the county in which such town may be situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated: * * * And provided further, That no title shall be acquired under the provisions of this act to any mine of gold, silver, cinnabar, or copper.

15 STAT. 67, Chap. 83, JUNE 8, 1868.

MINERALS RESERVED—AMENDMENT.

AN ACT To amend an act entitled "An act for the relief of the inhabitants of cities and towns upon public lands," approved March 2, 1867 (14 Stat. 541).

Be it enacted, etc., That the inhabitants of any town located on the public land of the United States may avail themselves, if the town authorities elect so to do, of the provisions of the act of March 2, 1867, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands": Provided, This act shall not prevent the issuance of patents to persons who have made, or may make, entries and elect to proceed under existing laws: And provided further, That no title under said act of March 2, 1867, shall be acquired to any valid mining claim or possession held under the existing laws of Congress: Provided, also, That in addition to the minimum price of the lands included in any town site entered under the provisions of this act, "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, there shall be paid by the parties availing themselves of the provisions of said acts all costs of surveying and platting any such town site, and expenses incident thereto, incurred by the United States. before any patent shall issue therefor.

A. TOWN SITES.

1. MINING CLAIMS NOT ACQUIRED BY.
2. "MINES" AND "MINERALS"—MEANING.
3. MINING CLAIMS ON TOWN SITE—RIGHT OF CLAIMANT.
4. PATENT—RESERVATIONS AS TO MINERALS.

1. MINING CLAIMS NOT ACQUIRED BY.

See 13 Stat. 343, p. 786; 13 Stat. 530, p. 788; 14 Stat. 541, p. 1376.

Under this town-site act no title can be acquired to any mine of gold, silver, cinnabar, or copper.

Richards v. Dower, 81 Cal. 44, p. 50.

The town-site acts provide that no title shall be acquired to any valid mining claim or possession held under existing laws of Congress by virtue of the provisions of such town-site acts.

Elridge, In re, Copp's Min. Lands, 339.
Nagler, In re, Copp's Min. Dec. 156.

2. "MINES" AND "MINERALS"—MEANING.

This was an act for "The relief of inhabitants of States and towns upon public lands," and, as enacted, comprised only the first sentence of the present section 2392 R. S., and the word "mine" in this act, and also in the section referred to, is synonymous with the word "deposit" or with the words "land containing deposits."

Hawke v. Deffeback, 4 Dak. 20, p. 33.

An essential requisite of a gold mine under this act is a natural deposit of rock or earth containing a sufficient quantity of gold to admit of profitable working.

Richards v. Dower, 81 Cal. 44, p. 50.

3. MINING CLAIMS ON TOWN SITE—RIGHT OF CLAIMANT.

A person holding a bona fide mining claim by virtue of compliance with local laws and regulations under the acts of Congress, and situated within the exterior boundaries embraced by a town-site location, is entitled to enter the same.

Nagler, In re, Copp's Min. Dec. 156, p. 157.
Register at Central City, In re, Copp's Min. Dec. 207.

4. PATENT—RESERVATIONS AS TO MINERALS.

A town-site patent should contain the reservation that no title is thereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession, as provided in this act and in the cumulative provision of the amendatory act of June 8, 1868 (15 Stat. 57).

Papina v. Alderson, 10 C. L. O. 52.

Where mining ground did not pass under a town-site patent the locator is entitled to extralateral rights and a reservation in the town-site patent is in accordance with the provisions of this act.

Golden v. Murphy, 31 Nev. 395, p. 408.

26 STAT. 1095, pp. 1099, 1101, 1102, 1 SUPP. R. S. 940, p. 945, MARCH 3, 1891.

TOWN-SITE ENTRIES ON MINERAL LAND.

AN ACT To repeal timber-culture laws, and for other purposes.

Be it enacted, etc., * * *

Section 11 of this act is section 85 of Alaska Compiled Laws, p. 867.

SEC. 16. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has

been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Section 16 is section 90, Alaska Compiled Laws.

* * * * * * *

SEC. 22. That the section of land reserved for the benefit of the Dakota Central Railroad Co. on the west bank of the Missouri River, at the mouth of Bad River, as provided by section 16 of "An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder and for other purposes," approved March 2, 1889 (25 Stat. 893), shall be subject to entry under the town-site law only.

A. TOWN-SITE SECTION OF ACT (16).

1. TOWN SITES ON MINERAL LANDS—PURPOSE OF ACT.
2. TOWN-SITE APPLICATION AND ENTRY—MINERAL RIGHTS.
3. MINERAL AND TOWN-SITE CLAIMANTS—RIGHTS.
4. MINERAL CHARACTER OF LAND—PROOF.
5. TOWN-SITE ENTRY ON SURVEYED LANDS—FORM.
6. TOWN-SITE APPLICATION—EXCLUSION OF MINERALS.
7. TOWN-SITE OCCUPANT—RIGHT TO HEARING.
8. TOWN-SITE ENTRY OR PATENT—EFFECT ON MINING CLAIM.

1. TOWN SITES ON MINERAL LANDS—PURPOSE OF ACT.

See Alaska Comp. Laws, sec. 85, p. 867.

The design of section 16 is to authorize town sites to be located on mineral lands not at the time appropriated for mining purposes, and expressly to forbid the acquisition in such towns of titles by means of town-site patents to minerals or a valid mining claim.

Chilberg v. Consolidated Min. Co., 3 Alaska 235, p. 239.
See Murray v. Buol, 6 Mont. 397.

This section of the act enlarges the right given to a mineral claimant under sections 2386 and 2392 of the Revised Statutes in that it gives a mineral applicant a right to a patent of the excepted mineral veins, mining claims, or possessions, after a town-site patent has been issued.

Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

The purpose of Congress was to permit and authorize mineral prospecting and mining upon lands owned by the United States and merely occupied by others for some purpose other than mining, provided that such mining operation did not interfere with such occupancy.

Goldstein v. Juneau Townsite, 23 L. D. 417, p. 420.

A town site may be located on mineral land.

Rico Townsite, In re, 9 C. L. O. 90, p. 91.

While town-site entries may be made on mineral lands, yet no title can be acquired thereunder to any mine or mineral.

Old Dominion Copper Min., etc., Co. v. Haverly, 11 Ariz. 241, p. 251.

The devotion of a claimed placer area to town-site purposes is ordinarily inconsistent with the appropriation under the placer laws, and such a disposition of contingent title by a placer claimant should receive no official sanction.

Saunders, In re, 40 L. D. 217, p. 218.

2. TOWN-SITE APPLICATION AND ENTRY—MINERAL RIGHTS

A town-site application and entry made pending the mineral location and with a view to obtaining patent to the entire interest in the land included in the mineral location puts the town-site claimant in the attitude of asserting the nonmineral character of all of such land and of assuming the burden of establishing that fact by proof.

Goldstein v. Juneau Townsite, 23 L. D. 417, p. 420.

A town-site entry embracing patented lands can not be allowed.

Hulings v. Ward Townsite, 29 L. D. 21, p. 22.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

Where a town-site entry has been allowed on proof showing the land to be nonmineral and the money received for the land and a final certificate issued, the entryman is prima facie the equitable owner and entitled to a patent, and anyone thereafter attacking the entry assumes the burden of establishing such illegality in the procurement or allowance of the entry as will dispute the issuance of patent.

Harkrader v. Goldstein, 31 L. D. 87, p. 93.
Aspen Consol. Min. Co. v. Williams, 27 L. D. 1.
Overruling Goldstein v. Juneau Townsite, 23 L. D. 417.

Section 16 expressly provides for the protection of possessory rights under existing valid mining claims and an entry for such mineral veins so possessed may be made and patent issued therefor after the issuance of a town-site patent.

Hulings v. Ward Townsite, 29 L. D. 21, p. 23.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

All unpatented mining claims for which applications are on file must be excluded from a town-site entry.

Hulings v. Ward Townsite, 29 L. D. 21, p. 22.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

3. MINERAL AND TOWN-SITE CLAIMANTS—RIGHTS.

All subsisting and valid mining claims are subject to patent upon proper proofs, notwithstanding a town-site entry and patent, except that any such mineral entry shall not embrace surface ground where the owner shall have been in possession thereof before the inception of title of the mineral-vein claimant.

Hulings v. Ward Townsite, 29 L. D. 21, p. 24.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

As the existing rights of mineral claimants are reserved and protected by the statute, a segregation is not required, prior to the issuance of a town-site patent, for the purpose of excluding such mineral claims from patent.

Hulings v. Ward Townsite, 29 L. D. 21, p. 24.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

4. MINERAL CHARACTER OF LAND—PROOF.

The mere existence of the location of a mining claim is not of itself evidence of the mineral character of land as against a subsequent town-site entry.

Harkrader v. Goldstein, 31 L. D. 89, p. 93.
See Magruder v. Oregon, etc., R. Co., 28 L. D. 174.
Elda Min., etc., Co., In re, 29 L. D. 279.

The fact that mining locations were made prior to the entry of a town site and within its limits is proof of the valuable mineral character of the lands thus entered, and the burden is on the party seeking to show their nonmineral character.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 154.

5. TOWN-SITE ENTRY ON SURVEYED LANDS—FORM.

The statutory requirement as to conformity of the legal subdivisions of the public lands is clear, and the Land Department can not disregard it, and where a town-site entry is upon surveyed lands, the mandate of the statute is that in its exterior limits it shall conform to the legal subdivisions of the public lands.

Telluride Additional Townsite, In re, 33 L. D. 542, p. 543.

6. TOWN-SITE APPLICATION—EXCLUSION OF MINERALS.

A town-site claimant may exclude from his application any vein of gold, silver, cinnabar, copper, or lead, or any valid mining claim or possession held under existing law which may in fact be embraced within the town-site lots, and as to which no title would pass under the town-site patent.

Telluride Additional Townsite, In re, 33 L. D. 542, p. 544.

If a mineral vein or mining claim or possession be excluded from a town-site entry or patent, it must be shown to be a valid mining claim or possession held under existing law.

Telluride Additional Townsite, In re, 33 L. D. 542, p. 544.

7. TOWN-SITE OCCUPANT—RIGHT TO HEARING.

A waiver of all rights of review, rehearing, or reconsideration will not preclude a town-site occupant from afterwards questioning a decision of the department, where it appears that the purpose was not to preclude the occupants of a town site from thereafter applying to the Secretary of the Interior for the correction of any prejudicial errors or mistakes in the decision of the department.

Harkrader v. Goldstein, 31 L. D. 87, p. 92.
See Goldstein v. Juneau Townsite, 23 L. D. 417.

8. TOWN-SITE ENTRY OR PATENT—EFFECT ON MINING CLAIM.

A town-site patent which recites that no title can be acquired to any mine or to any valid mining claim or possession held under existing laws does not divest the department of jurisdiction to subsequently issue a patent for a lode claim within the lands covered by the town-site patent where the existence of such claim was known at the time.

Lalande v. Townsite of Saltese, 32 L. D. 211, p. 216.
See Pacific Slope Lode v. Butte Townsite, 25 L. D. 518.
Gregory Lode Claim, In re, 26 L. D. 144.
Brady v. Harris, 29 L. D. 89, p. 92.
Brady v. Harris, 29 L. D. 426, p. 433.

The issuance of a town-site patent does not determine the rights of a mineral locator in possession, nor does it convey title to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law within such town-site limits, as the statute expressly excludes from the operation of such town-site patent in such existing mineral vein, mining claim, or possession, and all such rights are protected by the statute.

Hulings v. Ward Townsite, 29 L. D. 21, p. 23.
See Lalande v. Townsite of Saltese, 32 L. D. 211, p. 213.

Under section 16 no title can pass by a town-site entry or patent to any valid mining claim or possession held under existing laws, and patents may be obtained for such claims at any time notwithstanding a town-site entry, or the issuance of a town-site patent.

Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 276, p. 278.
See Telluride Additional Townsite, In re, 33 L. D. 542.

A town-site patent, when issued, will not deprive a person of any right existing at the date of the town-site entry under any valid mining claim or possession within the patented area, as all such rights are protected; nor does the town site patent deprive the department of jurisdiction to issue patent for such mining claims as the statute expressly authorizes the issuance of such patent.

Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 102, p. 103.
Hulings v. Ward Townsite, 29 L. D. 21, p. 23.
See Lalande v. Townsite of Saltese, 32 L. D. 211.
Nome & Sinook Co. v. Townsite of Nome, 34 L. D. 276 (on review).

Patent issued either under section 2392 or this amendatory act is inoperative to convey title to any valid claim or possession held under the mining laws at the date of the town-site entry.

Brophy v. O'Hare, 34 L. D. 596, p. 598.
See Hulings v. Ward Townsite, 29 L. D. 21.
Lalande v. Townsite of Saltese, 32 L. D. 211.

A patent for a town site can not include any valid mining claim, but such patents except all mines or valid mining claims or possessions.

Turner v. Lang, 1 C. L. O. 51.

Placer-mining ground can not be included in a town-site patent.

Townsite of Butte, In re, 3 C. L. O. 131.
Townsite of Deadwood, In re, 8 C. L. O. 153.

Town-site patents may be acquired to lands in mining regions.

Townsite of Deadwood, In re, 8 C. L. O. 153, p. 154.

Land which has been returned as coal land by the surveyor general can not be included in a town-site entry.

Coal Land v. Townsite, 1 C. L. O. 19.

26 STAT. 158, JUNE 17, 1890.

TOWN SITE OF BUFFALO, WYO.

AN ACT To authorize the purchase of certain public lands by the city of Buffalo, Wyo., and for other purposes.

Be it enacted, etc., That the city of Buffalo, Wyo., is hereby authorized to enter under the town-site laws for town site, cemetery, and park purposes, the north half of the strip of land released from the Fort McKinney Military Reservation by Executive order dated January 10, 1889, and described therein as follows, to wit: (here follows description), * * * containing 320 acres: Provided, however, That the 5 acres of land now used and occupied for school purposes therein by the trustees of school district numbered 2, of Johnson County, Wyo., under the license heretofore given said trustees by the Secretary of War, and described as follows: (here follows description) * * * included in said 320 acres, shall be taken by said city in trust for, and shall be conveyed by said city to the said trustees of said school district numbered two, of Johnson County, Wyo., for school purposes, and without cost to said school district: Provided, That if it shall be proven to the satisfaction of the Secretary of the Interior that any of the lands so authorized to be purchased by said city are valuable for coal or minerals, such portion shall be excluded from such town-site entry.

TUNNEL ACT.

14 STAT. 242, JULY 25, 1866.

SUTRO TUNNEL—COMSTOCK LODE.

AN ACT Granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada.

Be it enacted, etc., That, for the purpose of the construction of a deep draining and exploring tunnel to and beyond the "Comstock lode," so-called, in the State of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel; also to sink mining, working, or air shafts along the line or course of said tunnel and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least 8 feet high and 8 feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills near Carson River, and within the boundaries of Lyon County, and extending from said initial point in a westerly direction 7 miles, more or less, to and beyond said Comstock lode; and the same right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel.

SEC. 2. And be it further enacted, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at $1.25 per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land or in the bona fide possession of other persons who claim under any law of Congress at the time of the passage of this act, and all minerals existing or which shall be discovered therein are excepted from this grant; that upon filing a plat of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue. And the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at $5 per acre, such mineral veins and lodes within 2,000 feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the provisions of this act, and to such legislation as Congress may hereafter provide: Provided, That the Comstock lode, with its dips, spurs, and angles, is excepted from this grant, and all other lodes, with their dips, spurs, and angles, located within the said 2,000 feet, and which are or may be, at the passage of this act, in the actual bona fide possession of other persons, are hereby excepted from such grant. And the lodes herein excepted, other than the Comstock lode, shall be withheld from sale by the United

States; and if such lodes shall be abandoned or not worked, possessed, and held in conformity to existing mining rules, or such regulations as have been or may be prescribed by the Legislature of Nevada, they shall become subject to such right of purchase by the grantee herein, his heirs or assigns.

SEC. 3. And be it further enacted, That all persons, companies, or corporations owning claims or mines on said Comstock lode or any other lode drained, benefited, or developed by said tunnel, shall hold their claim subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel the same rate of charges for drainage or other benefits derived from said tunnel or its branches, as have been, or may hereafter be, named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock lode at the time of the passage of this act.

A. SUTRO TUNNEL ACT.

1. RIGHTS CONFERRED.
2. "BRANCHES"—MEANING.
3. "DISCOVERED OR DEVELOPED"—MEANING.
4. MINING CLAIMS WITHIN 2,000 FEET PROHIBITED.
5. TIME FOR COMPLETION OF TUNNEL—FAILURE TO PROSECUTE.
6. MINES BENEFITED BY TUNNEL—CONDITIONS IN PATENT.
7. INTERESTED PERSONS MAY OBJECT TO PATENT.
8. COMSTOCK LODE—STATUS AND DATE OF ACT.
9. TUNNEL CLAIMS EXEMPT FROM ANNUAL ASSESSMENT.
10. WATER IN TUNNEL—RIGHT OF APPROPRIATION.
11. EFFECT ON AGRICULTURAL LANDS.

1. RIGHTS CONFERRED.

See sec. 2323 R. S., p. 164.

This act conferred upon A. Sutro and his assigns the right of preemption of lands to a certain extent on each side of the tunnel.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 62.

This statute, granting to A. Sutro and his assigns certain privileges to aid in the construction of a tunnel, conferred upon them the right of preemption of all lodes within 2,000 feet on each side of such tunnel.

Del Monte Min., etc., Co. v. Last Chance Min., etc., Co., 171 U. S. 55, p. 62.

The right to construct a tunnel was granted along any lode discovered and developed by the main tunnel, and this right can not be restricted unless there is something in the act which in terms or by implication limits its operation, but the language of the act seems to imply that the explorations may be extended to any distance and that all mines drained, benefited, or developed thereby shall be liable to pay the royalty agreed upon, if the lode or mine was discovered by the main tunnel.

Sutro Tunnel Co. v. Occidental, etc., Min. Co., 5 C. L. O. 98, p. 99.

Land embraced by the location of this tunnel was withdrawn from sale by letter from the department dated July 29, 1870.

Sutro, In re, Copp's Min. Lands 98.

2. "BRANCHES"—MEANING.

The word "branches" indicates that more than one branch tunnel would be run, and the fact that a mine is situated more than 2,000 feet from the main tunnel will not prevent the tunnel company from collecting its royalty on proof that such mine has been drained, benefited, or developed thereby, and prima facie proof of such fact is sufficient, and there is no limitation in the act as to the distance at which mines shall be situated from the tunnel to exempt them from the liability imposed.

Sutro Tunnel Co. v. Occidental, etc., Min. Co., 5 C. L. O. 98, p. 99.

3. "DISCOVERED OR DEVELOPED"—MEANING.

The words "discovered or developed," used in the first section of this act have reference to separate and distinct events, the happening of either of which was sufficient to perfect a grant of the right of way and its necessary consequences, and as many lodes had been discovered on the line of the tunnel at the time the act was passed, it is not presumed that the lawmakers by the word "discovered" had reference to such lodes, yet they might be developed by the tunnel.

Sutro Tunnel Co. v. Occidental, etc., Min. Co., 5 C. L. O. 98, p. 99.

4. MINING CLAIMS WITHIN 2,000 FEET PROHIBITED.

A mining claim can not be located within the line of the Sutro Tunnel and some 2,000 feet west of the Comstock lode, as the grant includes lands west of this lode within the 2,000-feet limits.

Sutro Tunnel Co., In re, 8 C. L. O. 54.

A mining claim which lies within the 2,000-feet limits can not be patented where it is on a lode other than the Comstock lode.

Lyons, In re, Copp's Min. Dec. 179.

In a location on the Comstock lode it is incumbent upon the surveyor general in his final survey to definitely ascertain and report whether or not the claim lies within the 2,000-feet limits of the located line of the Sutro Tunnel.

Chollar Potosi Min. Co., In re, Copp's Min. Dec. 96, p. 100.

5. TIME FOR COMPLETION OF TUNNEL—FAILURE TO PROSECUTE.

There is no provision in this act limiting the grantees to any certain period of time in which to complete the work on penalty of forfeiture.

Sutro Tunnel Co., In re 8. C. L. O. 54, p. 55.

Congress reserves the right to alter or modify the provisions of this act, but until this is done the privileges extended by the act are not affected by any failure to prosecute the work.

Sutro Tunnel Co., In re, 8 C. L. O. 54, p. 55.

6. MINES BENEFITED BY TUNNEL—CONDITIONS IN PATENT.

Any mine drained, benefited, or developed by the tunnel is subject to the royalties provided, and these must be inserted in patents when issued.

Sutro Tunnel Co., In re, 8 C. L. O. 54, p. 55.

While the conditions prescribed in section 3 of the act should be inserted in patents issued for mines on testimony establishing prima facie that any such mine has been drained, benefited, or developed, yet such condition should never be inserted in

any patents except patents for mines located upon the Comstock lode, unless it is made to appear prima facie that the mine or mines have been drained, benefited, or developed by said tunnel.

Sutro Tunnel Co. v. Occidental, etc., Min. Co., 5 C. L. O. 98, p. 100.

Patents issued for the Comstock lode or those in its immediate vicinity contain a clause to the effect that the claim granted shall be subject to the conditions specified in this section, and requiring the grantee to contribute to the tunnel owners for drainage or other benefits derived from such tunnel or its branches, such charges as may be agreed upon.

Sutro, In re, Copp's Min. Lands 98.

Hearings may be permitted to determine whether any mine on the Comstock lode has been benefited or drained by the Sutro Tunnel.

Brunswick Mine Claimants, In re, 3 C. L. O. 114.

7. INTERESTED PERSONS MAY OBJECT TO PATENT.

This act permits a party injuriously affected to appear at any stage of proceedings before patent and call attention to the fact that the record shows that applicant has no right to a patent.

Tiernan v. Salt Lake Min. Co., 1 C. L. O. 25.
See McMurdy v. Streeter, 1 C. L. O. 34.

8. COMSTOCK LODE—STATUS AND DATE OF ACT.

In construing section 3 the Comstock lode must be that which was known as and called by that name at the date of the passage of the act, and not what was thereafter known or what in the future might prove to be the Comstock lode.

Sutro Tunnel Co., In re, 3 C. L. O. 34, p. 36.
Brunswick Mine Claimants, In re, 3 C. L. O. 114.

To determine what patents should contain the conditions prescribed by this section, it is only necessary to determine what claims had been located on the Comstock lode at the date of the passage of the act.

Sutro Tunnel Co., In re, 3 C. L. O. 34, 35, 36.
Brunswick Mine Claimants, In re, 3 C. L. O. 114.

9. TUNNEL CLAIMS EXEMPT FROM ANNUAL ASSESSMENT.

Locators of lode claims affected by the Sutro Tunnel are not required to contribute the annual labor, as this act is not affected by later mining laws.

Sutro Tunnel Co., In re, 8 C. L. O. 54.

10. WATER IN TUNNEL—RIGHT OF APPROPRIATION.

Waters flowing into the Sutro tunnel from the drainage of adjacent lands, pumping from mines into the tunnel, and that discharged after being used in the machinery in connection with mining operations, do not constitute a natural stream of water.

Cardelli v. Comstock Tunnel Co., 26 Nev. 284, pp. 290–293.

The waters flowing into and through the Sutro Tunnel are produced by the capital, labor, and enterprise of the persons or corporations operating the tunnel and developing the mine, and therefore come into the tunnel artificially and make an artificial and temporary stream, and are the property of such persons engaged in the mining enterprise.

Cardelli v. Comstock Tunnel Co., 26 Nev. 284, p. 295.

Waters flowing into and through the Sutro Tunnel are artificially produced and create an artificial and temporary stream and in which the Goverment of the United States has no interest or claim, and such waters are not subject to appropriation by third persons under the laws of the State of Nevada.

Cardelli v. Comstock Tunnel Co., 26 Nev. 284, pp. 294, 295.

11. EFFECT ON AGRICULTURAL LANDS.

Congress did not by this act intend to abolish or do away with the distinction between mineral and agricultural lands or to allow mineral to be classed and disposed of as agricultural, but simply provided that the public survey might be extended over regions that were so clearly not agricultural that they had been prior thereto treated as exclusively mineral, but such tracts as appear to be clearly agricultural may be set apart for disposition as such, while the mineral land should still be reserved for disposition under the mining laws.

Nevada v. Surveyor's Mineral Return, 1 C. L. O. 18.

WITHDRAWALS OF PUBLIC LANDS.

25 STAT. 854, MARCH 2, 1889.

PUBLIC LANDS WITHDRAWN FROM PRIVATE ENTRY.

AN ACT To withdraw certain public lands from private entry.

Be it enacted, etc., That from and after the passage of this act no public lands of the United States, except those in the State of Missouri, shall be subject to private entry.

SEC. 2. That any person who has not heretofore perfected title to a tract of land of which he has made entry under the homestead law, may make a homestead entry of not exceeding one-quarter section of public land subject to such entry, such previous filing or entry to the contrary notwithstanding; but this right shall not apply to persons who perfect title to lands under the preemption or homestead laws already initiated: Provided, That all preemption settlers upon the public lands whose claims have been initiated prior to the passage of this act may change such entries to homestead entries and proceed to perfect their titles to their respective claims under the homestead law, notwithstanding they may have heretofore had the benefit of such law, but such settlers who perfect title to such claims under the homestead law shall not thereafter be entitled to enter other lands under the preemption or homestead laws of the United States.

* * * * * * *

SEC. 5. That any homestead settler who has heretofore entered less than one-quarter section of land may enter other and additional land lying contiguous to the original entry, which shall not, with the land first entered and occupied, exceed in the aggregate 160 acres without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and cultivation has been made for the original entry, when the additional entry is made, then the patent shall issue without furhter proof: Provided, That this section shall not apply to or for the benefit of any person who at the date of making application for entry hereunder does not own and occupy the lands covered by his original entry: And provided, That if the original entry should fail for any reason, prior to patent or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or if having been initiated shall be canceled.

* * * * * * *

A. HOMESTEAD ENTRY—RELINQUISHMENT—EFFECT.

B. AGRICULTURAL LANDS — DETERMINATION — BURDEN OF PROOF.

A. HOMESTEAD ENTRY—RELINQUISHMENT—EFFECT.

A person who has made and relinquished a homestead entry on one tract can not make a second entry under this statute where there is an adverse by a mineral claimant.

Majors v. Rinda, 24 L. D. 277, p. 279.

B. AGRICULTURAL LANDS—DETERMINATION—BURDEN OF PROOF.

Where land has once been adjudged agricultural, the burden of proof thereafter is upon the party asserting its character to be mineral.

Majors v. Rinda, 24 L. D. 277, p. 279.

32 STAT. 388, JUNE 17, 1902.

ARID LANDS WITHDRAWN.

AN ACT Appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Be it enacted, etc., That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June 30, 1901, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the 5 per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this act. * * *

SEC. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section 4 of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands, believed to be susceptible of irrigation from said works: Provided, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act. * * *

A. WITHDRAWAL ORDER—EFFECT AS AGAINST MINING CLAIM.
B. LANDS WITHDRAWN NOT DISPOSED OF AS COAL LANDS.

A. WITHDRAWAL ORDER—EFFECT AS AGAINST MINING CLAIM.

The order of withdrawal made by this act is sufficient to defeat an application where the applicant had not acquired any vested right and where his final proofs had not been approved or accepted by any officer of the Land Department.

Board of Control, etc., v. Torrence, 32 L. D. 472, p. 474.

A possessory right for a mining claim may be acquired under the mining laws which is a vested right, although the acquisition of title is not contemplated, and the power of withdrawal vested in the Secretary of the Interior under this act can not defeat such a vested right.

Instructions, In re, 32 L. D. 387.
See Board of Control, etc., v. Torrence, 32 L. D. 472.

B. LANDS WITHDRAWN NOT DISPOSED OF AS COAL LANDS.

Lands withdrawn from settlement, entry, or other form of disposal under the public-land laws, except homestead laws, in accordance with the provisions of this act are not subject to disposition under the coal-land laws.

Hopkins, In re, 32 L. D. 560.
See Board of Control, etc., v. Torrence, 32 L. D. 472.

36 STAT. 847, JUNE 25, 1910.

PRESIDENT AUTHORIZED TO WITHDRAW PUBLIC LANDS.

AN ACT To authorize the President of the United States to make withdrawals of public lands in certain cases.

Be it enacted, etc., That the President may, at any time, in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress.

SEC. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

A. WITHDRAWALS OF PUBLIC LANDS.

1. PURPOSE OF ACT—REPEALING EFFECT.
2. EXISTING LAWFUL ENTRIES EXCEPTED.
3. WITHDRAWALS FOR CLASSIFICATION PURPOSES—COAL, OIL, AND PHOSPHATE.
4. DISPOSAL OF COAL AND OIL LANDS WITHDRAWN.
5. SURFACE ENTRY PERMITTED OR LANDS WITHDRAWN.
6. LANDS WITHDRAWN NOT SUBJECT TO SCHOOL INDEMNITY SELECTIONS.
7. NONMINERAL LANDS RESTORED TO PUBLIC DOMAIN.

1. PURPOSE OF ACT—REPEALING EFFECT.

This act, giving the President authority to make temporary withdrawal of lands for definite purposes, was not intended to repeal other acts specifically permitting entry of other classes entirely in harmony with the purposes of any such withdrawal.

Gunn, In re, 39 L. D. 561, p. 563.
See Collins, In re, 39 L. D. 603.

A withdrawal of land under this act does not defeat the right to consideration under the act of June 22, 1910 (36 Stat. 583).

Collins, In re, 39 L. D. 603, p. 604.

2. EXISTING LAWFUL ENTRIES EXCEPTED.

This act provides that there shall be excepted from the force and effect of any withdrawal thereunder lands which are at the date of such withdrawal embraced in any lawful entry made at the date of such withdrawal.

Jenne, In re, 40 L. D. 408, p. 409.
See Covey, In re, 40 L. D. 410.

This act provides for agricultural entry of lands withdrawn thereunder only in cases where at the date of withdrawal a valid settlement had been made and was maintained pursuant to law.

Harrison, In re, 39 L. D. 614, p. 616.

A selection or location made in good faith of lands known as nonmineral at a time when nonmineral entries were allowed on an ex parte showing as to the nonmineral character of the land applied for is the lawful initiation of a claim under this statute and is excepted from its proviso.

Miller, In re, 40 L. D. 33, p. 34.

The provisions relating to discovery and development work are the only ones affording relief or protection to oil claimants who did not have complete and valid locations at the time such oil lands were withdrawn from settlement under this act.

Lowell, In re, 40 L. D. 303, p. 305.

The purpose of the proviso under section 2 of this act was to protect any bona fide occupant or claimant of oil or gas bearing lands who was in diligent prosecution of work leading to discovery of oil or gas as against any withdrawal of such lands, and the proviso has no bearing upon the question of the measure of proof necessary to sustain the allegation of a protest on the ground that the lands are mineral in character as against a nonmineral selection filed before the withdrawal.

Johnson v. Northern Pac. R. Co., 40 L. D. 321, p. 322.

3. WITHDRAWALS FOR CLASSIFICATION PURPOSES—COAL, OIL, AND PHOSPHATE.

This act authorizes the withdrawal of lands for classification, but in so far as it relates to withdrawal of land for classification of land as coal land, it must be construed with the act of March 3, 1909 (35 Stat. 844), and the act of June 22, 1910 (36 Stat. 583), as part of a uniform system for the classification of coal lands and the disposal of surface rights with the reservation of the United States of the right to prospect for, mine, and remove the coal found therein.

Miller, In re, 40 L. D. 33, p. 34.
See Gunn, In re, 39 L. D. 561.

By Executive order of August 24, 1910, certain lands in the Hailey, Idaho, land district were withdrawn from settlement, location, or sale for examination and classification with respect to coal value and subject to all the provisions, limitations, exceptions, and conditions contained in that act and the act of June 22, 1910 (36 Stat. 583).

Woodhouse, In re, 41 L. D. 145, p. 146.

Prior to this act there was no statute expressly authorizing the Secretary of the Interior or the President to make withdrawals of public lands containing oil or petroleum deposits from all forms of location, settlement, selection, sale, or entry under the public land or mining laws of the United States; and the withdrawal order of September 27, 1909, was void, and the validity of an existing petroleum placer mining location was not affected by such order of withdrawal.

United States v. Midwest Oil Co., 206 Fed. 141, p. 143.
Overruled: United States v. Midwest Oil Co., — U. S. — (Feb. 23, 1915).

Under this statute the President, by order of July 2, 1910, withdrew from settlement, location, sale, or entry, and reserved for classification, certain petroleum lands in California belonging to the United States.

California, In re, 41 L. D. 592, p. 593.

So long as the presidential order of withdrawal stands as to the oil lands described there can be no preferred school indemnity selections made on the part of the State, as such selections are not among the classes of claims.

California, In re, 41 L. D. 592, p. 594.

The withdrawal as to phosphate reserve created by Executive order of July 2, 1910, is for classification and in aid of legislation as to the disposition of phosphate deposits and is tentative in character, and an applicant is protected where his application was filed before the tract was withdrawn for phosphate reserve, if otherwise valid.

Covey, In re, 40 L. D. 410.

4. DISPOSAL OF COAL AND OIL LANDS WITHDRAWN.

Under this act land may be withdrawn and reserved from any disposal for classification and appraisement with respect to coal value.

Hurley, In re, 40 L. D. 591, p. 592.

The second proviso of section 2 is not construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon oil lands after any withdrawal, and where the withdrawal antedated this statute.

Lowell, In re, 40 L. D. 303, p. 305.

This act, known as the withdrawal act, authorizes the President to temporarily withdraw any public lands for classification or other public purposes, and under this act lands may be included in a petroleum withdrawal.

Holmes v. Kinsey, 40 L. D. 557, p. 558.

Where lands withdrawn under this act are found to contain deposits of petroleum, legislation may be enacted permitting entry of the surface and a limited patent as in case of coal lands under the act of June 22, 1910 (36 Stat. 583).

Holmes v. Kinsey, 40 L. D. 557, p. 558.

Lands classified as oil lands and reserved by Executive order ceased to be subject to disposal under the agricultural land laws.

California, In re, 40 L. D. 301, p. 303.
Lowell, In re, 40 L. D. 303, p. 305.
California, In re, 41 L. D. 592, p. 597.

5. SURFACE ENTRY PERMITTED OR LANDS WITHDRAWN.

Under this statute the surface may be entered under nonmineral laws and the coal underneath the surface may be reserved, or the Land Department is authorized to withdraw such lands from nonmineral or agricultural entry, and if it is believed the geological conditions are such that valuable deposits may exist therein, the department can maintain such withdrawal until time and development determine.

United States v. Kostelak, 207 Fed. 447, p. 453.

6. LANDS WITHDRAWN NOT SUBJECT TO SCHOOL INDEMNITY SELECTIONS.

Lands withdrawn from disposition by presidental order on account of their mineral character are not subject to school indemnity selections, and the Secretary of the Interior has no authority to approve a selection, although the effort to make the selection was initiated prior to the order of withdrawal.

California, In re, 41 L. D. 592, p. 597.

No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and certified, and a discovery of mineral made prior to such time will defeat the selection.

California, In re, 41 L. D. 592, p. 597.
Kinkade v. California, 39 L. D. 491, p. 494.

7. NONMINERAL LANDS RESTORED TO PUBLIC DOMAIN.

Lands withdrawn under this act and which on subsequent examination prove to be nonmineral in character may be restored to the public domain for disposal.

Holmes v. Kinsey, 40 L. D. 557, p. 558.

If it should be satisfactorily established that lands withdrawn by the presidential order of July 2, 1910, were nonoil in character, it would be the duty of the department to call this fact to the attention of the President and recommend a modification of the order of withdrawal so as to eliminate the particular nonoil lands; but without such modification the order of withdrawal must stand as to the entire tracts.

California, In re, 41 L. D. 592, p. 594.

37 STAT. 497, AUGUST 24, 1912.

PUBLIC LANDS WITHDRAWN—AMENDMENT.

AN ACT To amend section 2 of an act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June 25, 1910.

Be it enacted, etc., That section 2 of the act of Congress approved June 25, 1910 (36 Stat. 847), be, and the same hereby is, amended to read as follows:

"SEC. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation,

and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: Provided further, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June 25, 1910: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress."

EXECUTIVE ORDER—ALASKA.

Under authority of the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), it is hereby ordered that the Executive order dated March 28, 1911, withdrawing "all tracts of public lands in the District of Alaska upon which hot springs, or other springs, the waters of which possess curative medicinal properties, are located, to the extent of 160 acres surrounding each spring, in rectangular form with side and end lines equidistant, as near as may be, from such spring or group of springs," be revoked so far as it applies to lands within national forests.

WOODROW WILSON.

THE WHITE HOUSE, 24 January, 1914.

PUBLICATIONS ON METHODS OF MINING.

A limited supply of the following publications of the Bureau of Mines is temporarily available for free distribution. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of especial interest to them. Requests for publications should be addressed to the Director, Bureau of Mines.

BULLETIN 10. The use of permissible explosives, by J. J. Rutledge and Clarence Hall. 1912. 34 pp., 5 pls., 4 figs.

BULLETIN 17. A primer on explosives for coal miners, by C. E. Munroe and Clarence Hall. 61 pp., 10 pls., 12 figs. Reprint of United States Geological Survey Bulletin 423.

BULLETIN 42. The sampling and examination of mine gases and natural gas, by G. A. Burrell and F. M. Seibert. 1913. 116 pp., 2 pls., 23 figs.

BULLETIN 45. Sand available for filling mine workings in the Northern Anthracite Coal Basin of Pennsylvania, by N. H. Darton. 1913. 33 pp., 8 pls., 5 figs.

BULLETIN 46. An investigation of explosion-proof mine motors, by H. H. Clark. 1912. 44 pp., 6 pls., 14 figs.

BULLETIN 48. The selection of explosives used in engineering and mining operations, by Clarence Hall and S. P. Howell. 1913. 50 pp., 3 pls., 7 figs.

BULLETIN 52. Ignition of mine gases by the filaments of incandescent electric lamps, by H. H. Clark and L. C. Ilsley. 1913. 31 pp., 6 pls., 2 figs.

BULLETIN 60. Hydraulic mine filling, its use in the Pennsylvania anthracite fields, a preliminary report, by Charles Enzian. 1913. 77 pp., 3 pls., 12 figs.

BULLETIN 62. National mine-rescue and first-aid conference, Pittsburgh, Pa., September 23–26, 1912, by H. M. Wilson. 1913. 74 pp.

BULLETIN 68. Electric switches for use in gaseous mines, by H. H. Clark and R. W. Crocker. 1913. 40 pp., 6 pls.

TECHNICAL PAPER 11. The use of mice and birds for detecting carbon monoxide after mine fires and explosions, by G. A. Burrell. 1912. 15 pp.

TECHNICAL PAPER 13. Gas analysis as an aid in fighting mine fires, by G. A. Burrell and F. M. Seibert. 1912. 16 pp., 1 fig.

TECHNICAL PAPER 14. Apparatus for gas-analysis laboratories at coal mines, by G. A. Burrell and F. M. Seibert. 1913. 24 pp., 7 figs.

TECHNICAL PAPER 17. The effect of stemming on the efficiency of explosives, by W. O. Snelling and Clarence Hall. 1912. 20 pp., 11 figs.

TECHNICAL PAPER 18. Magazines and thaw houses for explosives, by Clarence Hall and S. P. Howell. 1912. 34 pp., 1 pl., 5 figs.

TECHNICAL PAPER 19. The factor of safety in mine electrical installations, by H. H. Clark. 1912. 14 pp.

TECHNICAL PAPER 21. The prevention of mine explosions, report and recommendations, by Victor Watteyne, Carl Meissner, and Arthur Desborough. 12 pp. Reprint of United States Geological Survey Bulletin 369.

BULLETIN 90. Abstracts of current decisions on mines and mining, December, 1913, to September, 1914, by J. W. Thompson. 1915. 176 pp.

TECHNICAL PAPER 22. Electrical symbols for mine maps, by H. H. Clark. 1912. 11 pp., 8 figs.

TECHNICAL PAPER 23. Ignition of mine gas by miniature electric lamps with tungsten filaments, by H. H. Clark. 1912. 5 pp.

TECHNICAL PAPER 24. Mine fires, a preliminary study, by G. S. Rice. 1912. 51 pp., 1 fig.

TECHNICAL PAPER 28. Ignition of mine gas by standard incandescent lamps, by H. H. Clark. 1912. 6 pp.

TECHNICAL PAPER 30. Mine-accident prevention at Lake Superior iron mines, by D. E. Woodbridge. 1913. 38 pp., 9 figs.

TECHNICAL PAPER 39. The inflammable gases in mine air, by G. A. Burrell and F. M. Seibert. 1913. 24 pp., 2 figs.

TECHNICAL PAPER 41. Mining and treatment of lead and zinc ores in the Joplin district, Mo., a preliminary report, by C. A. Wright. 1913. 43 pp., 5 figs.

TECHNICAL PAPER 44. Safety electric switches for mines, by H. H. Clark. 1913. 8 pp.

TECHNICAL PAPER 47. Portable electric mine lamps, by H. H. Clark. 1913. 13 pp.

TECHNICAL PAPER 58. Action of acid mine water on the insulation of electric conductors, a preliminary report, by H. H.Clark and L. C. Ilsley. 1913. 26 pp., 1 fig.

TECHNICAL PAPER 59. Fires in the Lake Superior iron mines, by Edwin Higgins. 34 pp., 2 pls.

TECHNICAL PAPER 75. Permissible electric lamps for miners, by H. H. Clark. 1914. 21 pp., 3 figs.

MINERS' CIRCULAR 3. Coal-dust explosions, by G. S. Rice. 1911. 22 pp.

MINERS' CIRCULAR 4. The use and care of mine-rescue breathing apparatus, by J. W. Paul. 1911. 24 pp., 5 figs.

MINERS' CIRCULAR 5. Electrical accidents in mines, their causes and prevention, by H. H. Clark, W. D. Roberts, L. C. Ilsley, and H. F. Randolph. 1911. 10 pp., 3 pls.

MINERS' CIRCULAR 7. Use and misuse of explosives in coal mining, by J. J. Rutledge, with a preface by J. A. Holmes. 1913. 52 pp., 8 figs.

MINERS' CIRCULAR 8. First-aid instructions for miners, by M. W. Glasgow, W. A. Raudenbush, and C. O. Roberts. 1913. 66 pp., 46 figs.

MINERS' CIRCULAR 9. Accidents from falls of roof and coal, by G. S. Rice. 1912. 16 pp.

MINERS' CIRCULAR 10. Mine fires and how to fight them, by J. W. Paul. 1912. 14 pp.

MINERS' CIRCULAR 11. Accidents from mine cars and locomotives, by L. M. Jones. 1912. 16 pp.

MINERS' CIRCULAR 12. The use and care of miners' safety lamps, by J. W. Paul. 1913. 16 pp., 4 figs.

MINERS' CIRCULAR 13. Safety in tunneling by D. W. Brunton and J. A. Davis. 1913. 19 pp.

MINERS' CIRCULAR 14. Gases found in coal mines, by G. A. Burrell. 1913. — pp.

MINERS' CIRCULAR 15. Rules for mine-rescue and first-aid field contests, by J. W. Paul. 1913. 12 pp.

MINERS' CIRCULAR 16. Hints on coal-mine ventilation, by J. J. Rutledge. 1914. 22 pp.

MINERS' CIRCULAR 17. Accidents from falls of rock or ore, by Edwin Higgins. 1914. 15 pp., 8 figs.

MINERS' CIRCULAR 19. The prevention of accidents from explosives in metal mining, by Edwin Higgins. 1914. 16 pp., 11 figs.

LIST OF ABBREVIATIONS.

A.

Ala.	Alabama.
Am.	American Reports.
Am. Dec.	American Decisions.
Am. St.	American State Reports.
Ann. Cas.	Annotated Cases.
App. Cas. (D. C.)	Appeal Cases, District of Columbia.
Ariz.	Arizona.
Ark.	Arkansas.
Atl.	Atlantic Reporter.

B.

Brainard's Leg. Prec.	Brainard's Legal Precedents.

C.

Cal.	California.
Cal. App.	California Appeals.
Carpenter's Min. Code.	Carpenter's Mining Code.
C. C. A.	Circuit Court of Appeals (U. S.).
Clark's Min. L. Dig.	Clark's Mineral Law Digest.
Colo.	Colorado.
Colo. App.	Colorado Appeals.
Copp's L. O. or C. L. O.	Copp's Land Owner.
Copp's Min. Lands.	Copp's Mineral Lands.
Copp's Min. Dec.	Copp's Mining Decisions.
Copp's Pub. Land Laws.	Copp's Public Land Laws.
Ct. of Claims.	Court of Claims (U. S.).

D.

Dak.	Dakota.
D. C.	District of Columbia.
Dill.	Dillon (U. S. Cir. Ct.).

F.

Fed.	Federal Reporter (U. S. District and Circuit).
Fed. Cas.	Federal Cases (U. S. District and Circuit).

G.

Ga.	Georgia.

H.

How.	Howard (U. S.).

I.

Idaho.	Idaho.
Iowa.	Iowa.

K.

Kan.	Kansas.
Kan. App.	Kansas Appeals.

L.

La.	Louisiana.
Lands & R. Rec.	Lands and Railroad Records.
Law & Eq.	Law and Equity (Eng.).
L. D.	Decisions of United States Land Department.
L. ed.	Lawyers' Edition Supreme Court Reports.
Lester.	Lester's Land Laws and Decisions.
L. R. A.	Lawyers' Reports Annotated.
L. R. A. (N. S.)	Lawyers' Reports Annotated (New Series).
L. R. Ch.	Law Reports, Chancery (Eng.).

M.

Mackey.....Mackey (D. C.).
McLean.....McLean (U. S. Cir. Ct.).
Mich.....Michigan.
Minn.....Minnesota.
Mo.....Missouri.
Mo. App.....Missouri Appeals.
Mont.....Montana.
Morr.....Morrison's Mining Reports.
Morr. Min. Rts.....Morrison's Mining Rights.
M. & W.....Meeson and Welsby's Reports (Eng.).

N.

N. D.....North Dakota.
N. E.....Northeastern Reporter.
Neb.....Nebraska.
Nev.....Nevada.
N. J. Eq.....New Jersey Equity.
N. Mex.....New Mexico.
N. W.....Northwestern Reporter.

O.

Okla.....Oklahoma.
Oreg.....Oregon.
Op. Atty. Gen.....Opinions of the Attorney General.

P.

Pac.....Pacific Reporter.
Pa. St.....Pennsylvania State.
Pet.....Peters (U. S.).
Plow.....Plowden's Reports (Eng.).

R.

R. S.....United States Revised Statutes.

S.

Sawy.....Sawyer (U. S. Cir. Ct.).
Scott L. R.....Scott's Law Reports (Eng.).
S. Ct.....Supreme Court Reporter.
S. Dak.....South Dakota.
S. E.....Southeastern Reporter.
Sickels' Min. L. & D.....Sickels' Mining Laws and Decisions.
So.....Southern Reporter.
Stat.....United States Statutes at Large.
S. W.....Southwestern Reporter.

T.

Tex.....Texas.
Tex. Civ. App.....Texas Civil Appeals.

U.

U. S.....United States Supreme Court Reports.
Utah.....Utah.

W.

Wall.....Wallace (U. S.).
Wash.....Washington.
Water & Min. Cas.....Water and Mining Cases.
W. R.....Weekly Reporter.
W. Va.....West Virginia.
Wyo.....Wyoming.

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